

***United States Court of Appeals
for the Second Circuit***



APPENDIX

75-4127

No. 75-4127

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

THE EDISON CLUB,

Appellant

v.

COMMISSIONER OF INTERNAL REVENUE,

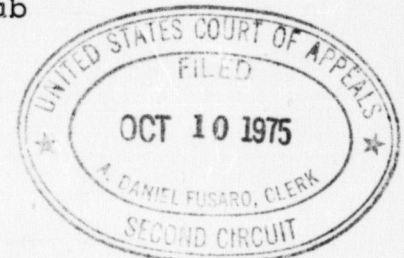
Appellee

ON APPEAL FROM THE DECISION OF THE
UNITED STATES TAX COURT

APPENDIX

J.P. JANETATOS
ROBERT A. FESJIAN
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
Counsel for Petitioner-Appellant
The Edison Club

Of Counsel:
BAKER & MCKENZIE



PAGINATION AS IN ORIGINAL COPY

APPENDIX

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Exhibits Contained in Separate Exhibit Volume

1-A	19-S (Minutes of January
2-B	11, 1968 [p.4],
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4-D	[pp.1-2], December 6,
5-E	1968 [p.3])
6-F	25-Y
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15-O	34-HH
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[p.4], and December 1,	43-QQ
1967 [p.1]	44-RR

UNITED STATES TAX COURT GENERAL DOCKET

7825-71

DOCKET NO.

<p><u>THE EDISON CLUB (C.J.Assini-President)</u> <u>Box 93</u> <u>Rexford, New York</u> PETITIONER.</p>		<p>APPEARANCES FOR PETITIONER: J. P. Janetatos, (Baker & McKenzie) 815 Connecticut Avenue, N.W. Washington, D.C. 20006 1/14/74 David W. Welles 375 Park Ave. N.Y., N.Y. E/A Robert A. Fesjian 815 Connecticut Ave. N.W. Washington, D.C. 20006 E/A 1-14-74</p>	
<p>vs. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.</p>			
Date Month Day Year	Filings and Proceedings	Action	Served
Nov 22, 1971	PETITION FILED: FEE PAID	Nov. 22, 1971	Nov. 24, 1971
Nov. 22, 1971	REQUEST by Petr. for trial at New York	GRANTED Nov. 24, 1971	Nov. 24, 1971
Jan 21, 1972	ANSWER filed by Resp		Jan 24, 1972
Mar. 20, 1973	NOTICE OF TRIAL on June 18, 1973 at New York, N.Y.		Mar. 20, 1973
June 18, 1973	HEARING at New York, N.Y. before Judge Wiles.		JUN 27 1973
	Petr. Motion for Continuance - GRANTED.		
	Continued Generally.		
Oct. 9, 1973	NOTICE OF TRIAL on January 14, 1974 at New York, N.Y.		Oct. 9, 1973
Jan 14, 1974	HEARING At New York, N.Y. before Judge Tannenwald		
	Appearance for Petr. by David W. Welles		JAN 30 1974
	Appearance for Petr. by Robert A. Fesjian		JAN 30 1974
	Petr. motion for Continuance - GRANTED		
	CONTINUED GENERALLY		
Jan 14, 1974	ORDER that petr. motion for continuance is GRANTED		JAN 30 1974
	in this case and this case is CONTINUED GENERALLY.		
Jan 25, 1974	TRANSCRIPT of Jan 14, 1974 received.		
Feb. 11, 1974	JOINT MOTION to calendar case for trial at New York, New York on June 10, 1974.	GRANTED Feb. 12, 1974	FEB 13 1974
March 1, 1974	NOTICE of Trial on June 10, 1974 at NY, NY.		March 1, 1974
(CONTINUED ON PAGE 2)			

DOCKET NO. 7825-71

(Continuation)

THE EDISON CLUB		PETITIONER	PAGE 2
Date Month Day Year	Filings and Proceedings	Action	Served
June 12, 1974	TRIAL at New York before Judge Quealy.		
	Leave Record open until June 24, 1974 for filing of		
	Supplemental Stipulation.		
	Stip. of Facts with Jt Exh: 1-A thru 26-Z, 27A thru 46TT		
	ORIGINAL BRIEFS DUE: Aug. 22, 1974		
	REPLY BRIEFS DUE: Sept. 23, 1974.		
	SUBMITTED TO JUDGE QUEALY		
June 21, 1974	SUPPLEMENTAL STIPULATION OF FACTS Filed.		
June 24, 1974	TRANSCRIPT of June 10 and 12, 1974 rec'd		
Aug. 22, 1974	BRIEF for petitioner filed.		AUG 23 1974
Aug. 22, 1974	BRIEF for respondent filed.		AUG 23 1974
Sept. 16, 1974	MOTION by Resp. to extend time to Oct. 7, 1974 within	GRANTED Sep. 18, 1974	SEP 19 1974
	which to file Reply Brief. (No Obj. Petr.)		
Oct. 7, 1974	REPLY BRIEF for Petitioner filed.		OCT 8 1974
Oct. 7, 1974	REPLY BRIEF for Respondent filed.		OCT 8 1974
Feb. 6, 1975	MEMORANDUM FINDINGS OF FACT AND OPINION filed,		FEB 6 1975
	Judge Quealy.		
	(Decision will be entered under Rule 155)		
Mar. 4, 1975	RESPONDENT'S COMPUTATION filed.		
Mar. 4, 1975	PETITIONER'S COMPUTATION filed.		
Mar. 7, 1975	ORDER, that case is calendared for hearing under Rule		MAR 7 1975
	155 at Motions Session on Mar. 12, 1975 at Wash., D.C.		
* Mar. 13, 1975	ORDER, that the decision in case will be entered in		MAR 14 1975
	accordance with Resp's. Computations filed Mar. 4, 1975.		
Mar. 14, 1975	DECISION ENTERED, Judge Quealy.		Mar. 14, 1975
* Mar. 12, 1975	HEARING at Wash., D.C. before Judge Dawson.		
	Hearing under Rule 155 - Referred to Judge Quealy.		

(Continued to page 3)

UNITED STATES TAX COURT
GENERAL DOCKET

DOCKET NO. 7828-71

(Continuation)

[illegible]

FILED

1971 NOV 22 AM 10 24

UNITED STATES TAX COURT

UNITED STATES
TAX COURT

THE EDISON CLUB,

Petitioner

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent

Docket No. 78-5-71

Fee rec'd

P E T I T I O N

The above-named petitioner hereby petitions for a redetermination of the deficiency set forth by the Commissioner of Internal Revenue in his notice of deficiency (Symbols: AP:NH:HM:HWB) dated August 25, 1971, and as the basis for its case alleges as follows:

1. The petitioner is a corporation duly organized and existing under the laws of the State of New York, with its principal office at Rexford, New York. The returns for the periods here involved were filed with the district director at Albany, New York.

2. The notice of deficiency (a copy of which is attached and marked Exhibit A) was mailed to the petitioner on August 25, 1971.

3. The deficiencies as determined by the Commissioner are in income taxes for the fiscal years ended March 31, 1967, and March 31, 1968, in the amount of \$4,630.48, and \$18,537.72 respectively, and an addition to tax, pursuant to section 6651 of the Internal Revenue Code of 1954, in the amount of \$463.05, all of which taxes and addition to tax are in dispute.

4. The determination of tax set forth in the said notice of deficiency is based upon the following errors:

(a) The Commissioner erred in determining that petitioner realized income from club assessments in the amount of \$38,925 in lieu of \$25,025 reported for the fiscal year ended March 31, 1967;

(b) The Commissioner erred in determining that petitioner realized income from club assessments of \$38,355 which was not reported for the fiscal year ended March 31, 1968;

(c) The Commissioner erred in determining that there was any deficiency in tax for the fiscal year ended March 31, 1967, to which any addition to tax under section 6651 could be applied.

5. The facts upon which the petitioner relies as the basis of this case are as follows:

(a) Petitioner is a corporation organized and operated as a membership corporation under the laws of the State of New York;

(b) Petitioner owns and operates its facilities as a private social and recreational club for the benefit of its members;

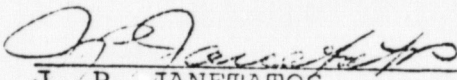
(c) Petitioner's members, in both of the years at issue, voluntarily voted authorization for special assessments upon the members;

(d) Such assessments were entirely for capital improvements to the facilities of the club and were expended solely for capital purposes;

(e) No part of the assessments paid to the club by its members was used for operating purposes;

(f) The assessments paid to the club by its members were contributions to the capital of the corporation and were excluded from income pursuant to section 118 of the Internal Revenue Code of 1954.

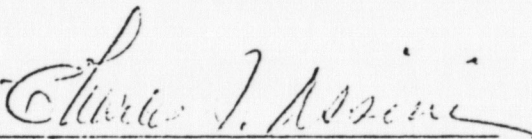
WHEREFORE, the petitioner prays that this Court may try the case and determine that no deficiencies are due from the petitioner for the fiscal years ended March 31, 1967, and March 31, 1968, and that the petitioner is entitled to such other and further relief as to the Court seems just and proper under the circumstances.


J. P. JANETATOS
Baker & McKenzie
815 Connecticut Ave., N.W.
Washington, D. C. 20006

VERIFICATION

State of New York)
) SS:
County of Saratoga)

C. J. Assini, being duly sworn, says that he is the president of The Edison Club, and that he is duly authorized to verify the foregoing petition; that he has read the foregoing petition, and is familiar with the statements contained therein, and that the statements contained therein are true.


C. J. ASSINI
President
The Edison Club
Box 93
Rexford, New York 12148

Subscribed and sworn to
before me this 13th
day of November, 1971.


Notary Public



Department of the Treasury

Regional Commissioner
Internal Revenue Service
North-Atlantic Region

Date:

AUG 25 1971

In reply refer to:

AP:NH:FM:HWB

CERTIFIED MAIL

► The Edison Club
Box 93
Rexford, New York 12148

— Gentlemen:

<u>Tax Year Ended</u>	<u>Deficiency</u>	<u>Addition To Tax Section 6651</u>
March 31, 1967	\$ 4,630.48	\$463.05
March 31, 1968	18,537.72	-
Total	<u>\$23,168.20</u>	<u>\$463.05</u>

This letter is to notify you—as required by law—that we have determined the income tax deficiencies shown above. I regret we have been unable to reach a satisfactory agreement in your case. The enclosed statement shows how the deficiencies were computed.

If you do not intend to contest this determination in the United States Tax Court, please sign and return the enclosed waiver form. This will permit an early assessment of the deficiencies and limit the accumulation of interest. The enclosed self-addressed envelope is for your convenience.

If you decide not to sign and return the waiver, the law requires that after 90 days from the date of mailing this letter (150 days if this letter is addressed to you outside the United States and the District of Columbia) we assess and bill you for the deficiencies. However, if within the time stated you contest this determination by filing a petition with the United States Tax Court, Box 70, Washington, D.C. 20044, we may not assess any deficiencies and bill you until after the Tax Court has decided your case. You may obtain a copy of the rules for filing a petition by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

If you intend to file a petition with the United States Tax Court, you must do so within the time stated above (90 or 150 days, as the case

may be); this period is fixed by law, and the Court cannot consider your case if your petition is filed late.

Under section 7463 of the Internal Revenue Code, the United States Tax Court has a simplified procedure for handling cases where the disputed portion of the deficiency does not exceed \$1,000 for any one taxable year. You may obtain information on this special procedure, as well as a copy of the rules for filing a petition with the Tax Court, by writing to the Clerk of the Tax Court at the Court's Washington, D.C. address.

Sincerely yours,
~~Randolph W. Thremer~~
Commissioner Johnnie M. Walters
By

L. S. Williams
L.S. WILLIAMS
Acting Chief
Appellate Branch Office

Enclosures:
Waiver, Form 870
Statement
Envelope

STATEMENT

The Edison Club
Box 93
Rexford, New York 12148

Tax Liability for Taxable Years Ended March 31, 1967 and March 31, 1968.

INCOME TAX

<u>Taxable Years Ended</u>	<u>Tax</u>	<u>Deficiency</u>
		<u>Addition to Tax Sec. 6651</u>
March 31, 1967	\$ 4,630.48	\$463.05
March 31, 1968	18,537.72	-
Totals	<u>\$23,168.20</u>	<u>\$463.05</u>

1. It has been determined that your income from club assessments totaled \$38,925 in lieu of \$25,025 reported on your income tax return for the FYE March 31, 1967. Accordingly your taxable income is increased \$13,900.

It has been determined that you realized income from club assessments of \$38,355 which you failed to report on your income tax return for the FYE March 31, 1968. Accordingly, your taxable income is increased \$38,355.

2. As you failed to file a timely income tax return for the taxable year ended March 31, 1967, 10% of the net amount due has been added thereto in accordance with the provisions of Section 6651 of the Internal Revenue Code of 1954.

A copy of this letter and statement is being forwarded to your representative, Mr. J.P. Janetatos, Baker & McKenzie, 815 Connecticut Avenue, N.W., Washington, D.C. 20006, in accordance with authority conferred upon him in the power of attorney executed by you and on file with the Service.

AP:NH:HM:HWB

The Edison Club

[- 2 -]

Appellate Division

Taxable Year Ended March 31, 1967

Schedule 1

Adjustments to Taxable Income

Taxable income as disclosed by return	\$17,148.00
Unallowable deductions and additional income:	
(a) Other income	13,900.00
Taxable income as corrected	<u>\$31,048.00</u>

Schedule 1-A

Explanation of Adjustments

Taxable Year Ended March 31, 1967

(a) Other income	\$13,900.00
See the introductory paragraphs of this statement.	

Schedule 2

Taxable Year Ended March 31, 1967

Computation of Income Tax

Taxable income	\$31,048.00
Tax thereon:	
31,048.00 x 48% less \$6,500.00	8,403.04
Less: Investment credit (same as return)	677.74
Income tax liability	\$ 7,725.30
Income tax liability disclosed by return:	3,094.82
Deficiency	<u>\$ 4,630.48</u>
Addition to tax:	
Section 6651 (10% of above deficiency)	\$ 463.05
(See the introductory paragraphs of this statement)	

Taxable Year Ended March 31, 1968

Schedule 3

Adjustment to Taxable Income

Taxable income as disclosed by return	\$23,760.00
Unallowable deductions and additional income:	
(a) Other income	38,355.00
Taxable income as corrected	<u>\$62,115.00</u>

Schedule 3-A

Explanation of Adjustments

Taxable Year Ended March 31, 1968

(a) Other income	\$38,355.00
See the introductory paragraphs of this statement.	

AP:NH:HM:HWB

The Edison Club

[- 3 -]

Appellate Division

Schedule 4
Taxable Year Ended March 31, 1968
Computation of Income Tax

Taxable income (see Schedule 3)		\$62,115.00
Tax:		
$\$62,115.00 \times 48\%$ less \$6,500.00 =	\$23,315.20	
Add: tax surcharge $\$23,315.20 \times 2.486339\%$	<u>579.62</u>	23,894.82
Less: Investment credit (per return)		<u>1,193.56</u>
Income tax liability		\$22,701.26
Income tax liability disclosed by return:		<u>4,163.54</u>
Deficiency		<u>\$18,537.72</u>

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the State of New York, with its principal office at Rexford, New York. Petitioner's principal office was also in Rexford, New York at the time of the filing of the petition herein. Petitioner filed its income tax returns for the fiscal years ended March 31, 1967 and March 31, 1968 with the District Director of Internal Revenue at Albany, New York.

2. Petitioner keeps its books and records on an accrual method of accounting and files its returns on a fiscal year ending March 31.

3. During the fiscal years in issue, March 31, 1967 and March 31, 1968, petitioner was organized and existed under the Membership Corporations Law of New York. The Membership Corporations Law was repealed effective September 1, 1970.

4. Petitioner owns and operates its facilities as a social and recreational club primarily for the benefit of its members. Petitioner derives substantial income from the use of its facilities by non-members.

5. On December 21, 1965 petitioner was advised that its exemption from Federal income tax as an organization under Int. Rev. Code of 1954, § 501(c)(7) was revoked for the taxable years subsequent to March 31, 1959.

6. During the taxable years in issue petitioner had the following categories of members: Regular, Associate, House, Women, Junior #1, #2 and #3 and Pool.

7. During the taxable years in issue Ethel Thackeray was the office manager of the petitioner and one of her duties was to oversee the entries into all books of account of petitioner.

8. Since 1928, petitioner had leased the land upon which its facilities were located, first from the General Electric Company and, later, from the General Electric Company's realty subsidiary, General Electric Realty Corporation.

9. On February 10, 1966, the Board of Directors authorized the opening of an account for the purchase of The Edison Club premises at the Schenectady Savings Bank. Said account is reflected in the General Ledger as Account Number 015.

10. On August 28, 1967, petitioner by letter extended an offer to General Electric Realty Corporation to purchase The Edison Club.

11. On December 29, 1967, petitioner was advised by General Electric Realty Corporation that the offer to purchase made by petitioner on August 28, 1967 was accepted.

12. The acquisition of The Edison Club was completed sometime in 1968.

13. The General Ledger of petitioner reflects transactions from March 1966 to February 1969 with miscellaneous stapled items. Respondent does not stipulate to any items stapled into said General Ledger. Account No. 015 titled "Schenectady Savings Bank - Purchase a/c" has been changed by pencil to "Schenectady Savings Bank - Capital Improvements." Account No. 501 was changed from "Assessments" to "Capital Improvements." Respondent does not stipulate to either pencil change in Account Nos. 015 or 501, nor that either of said changes properly reflect the entries in said accounts.

14. During the taxable year ended March 31, 1967, the amount of \$38,925.48 was credited to the 501 account in the General Ledger. During the taxable year ended March 31, 1968, the amount of \$38,354.82 was credited to the 501 account in the General Ledger.

15. The following documents are hereby made Joint Exhibits by the parties to this Stipulation subject to the reservations expressed below:

1A. Petitioner's income tax return for the fiscal year ended March 31, 1967.

2B. Petitioner's income tax return for the fiscal year ended March 31, 1968.

3C. "Dues Structures" for the taxable year beginning April 1, 1965 and "Dues Structures" for the taxable year beginning April 1, 1966, as forwarded to the members of The Edison Club.

4D. "Dues Structures" for the taxable year beginning April 1, 1967, as forwarded to the members of the Edison Club.

5E. "Dues Structures" for the taxable year beginning April 1, 1968, as forwarded to the members of The Edison Club.

6F. "Dues Structures" for the taxable year beginning April 1, 1969, as forwarded to the members of The Edison Club.

7G. Copy of the membership application for The Edison Club.

8H. The General Ledger of petitioner reflecting transactions from March 1966 to February 1969 with miscellaneous stapled items. Respondent does not stipulate to any items stapled into this Ledger. Account No. 015 titled "Schenectady Savings Bank - Capital Improvements." Account No. 501 was changed from "Assessments" to "Capital Improvements." Respondent does not stipulate to either pencil change in Account Nos. 015 or 501, nor that either of said changes properly reflect the entries in said accounts.

9I. The General Ledger of petitioner reflecting

transactions from April 1955 to April 1966.

10J. The General Journal of petitioner from September 1960 to March 1965.

11K. The General Journal of petitioner from April 1965 to March 1970.

12L. The Cash Disbursements Journal of petitioner from January 1961 to January 1969.

13M. The Cash Receipts Journal of petitioner from December 1959 to December 1963.

14N. The Cash Receipts Journal of petitioner from January 1964 to January 1969.

15O. A booklet given to members of The Edison Club containing the History, Activities and Facilities, Constitution, By-laws and Rules of the petitioner. Respondent stipulates that the Constitution, By-laws and Rules contained in said booklet were effective during the years in issue. Respondent does not stipulate to the truth of the matters asserted in the history segment of the booklet.

16P. True copies of the Original Minutes of the Board of Directors of The Edison Club from August 20, 1959, December 12, 1959 and May 12, 1960.

17Q. Copies of the Original Minutes of the Board of

Directors of The Edison Club from January 12, 1961 through January 8, 1965.

18R. Copies of the Original Minutes of The Edison Club from January 14, 1965 through December 14, 1967.

19S. Copies of the Original Minutes of The Edison Club from January 11, 1968 through December 14, 1972.

20T. The Edison Club membership file on Robert Christie.

21U. The Edison Club membership file on Stanley Kakol.

22V. The Edison Club membership file on Giles L. Van Vorst.

23W. The Edison Club membership file on Theodore Weissman.

24X. Copies of uncertified financial statements of The Edison Club from the period ended January 26, 1964 through the period ended November 28, 1971.

25Y. Passbook of the Schenectady Savings Bank Account No. 438,508 in account with The Edison Club and entitled Purchase Account.

26Z. Selected individual member accounts as reflected in the Accounts Receivable Ledger of The Edison Club.

27AA. Specimen membership cards for The Edison Club for the years 1966 - 1967 and 1967 - 1968.

28BB. Announcements of annual meetings of petitioner sent to members for meetings in December of 1965, 1966, 1967, 1968 and 1969.

29CC. Summary of The Edison Club lease agreements with General Electric Company and General Electric Realty Corporation.

30DD. A typical bill to members; specifically, a bill to Howard L. Tupper and attached individual member account from the Accounts Receivable Ledger.

31EE. Disbursements voucher cards showing checks made payable from petitioner's regular checking account to petitioner's savings account with the Schenectady Savings Bank Account No. 438,508 for the taxable years in issue.

32FF. Petitioner's cash receipts books for the taxable years in issue.

16. The following documents are hereby made Joint Exhibits by the parties to this Stipulation. With regard to these exhibits respondent only stipulates as to their authenticity and not to the truth of the statements contained therein.

33GG. A communication dated February 19, 1962 from Donald C. Hay, President of The Edison Club, sent to club members.

34HH. A communication dated March 25, 1964 from

J.T. Burns, President of petitioner, sent to club members.

35II. A communication dated March 8, 1965 from J.T. Burn President of petitioner, sent to club members with attached "dues structures."

36JJ. A communication dated March 9, 1967 from John P. Miller sent to club members with attached "dues structures."

37KK. A communication dated August 19, 1963 from W.S. Kleczek, secretary of petitioner, sent to R.L. Yowell, manager of real estate and construction operation of the General Electric Company.

38LL. A communication dated June 26, 1967 from W.S. Kleczek to R.L. Yowell with attachment.

39MM. A communication dated August 28, 1967 from W.S. Kleczek to R.L. Yowell.

40NN. A communication dated December 29, 1967 from D.S. Robb, Vice-President of General Electric Realty Corporation to W.S. Kleczek.

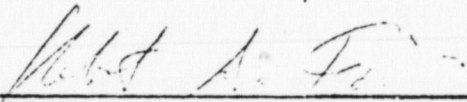
17. The following documents are hereby made Joint Exhibits by the parties to this Stipulation.

4100. Cash Disbursements Voucher No. 41423 and corresponding check.

42PP. Cash Disbursements Voucher No. 38093 and
corresponding check.

43QQ. Miscellaneous purchase sheet of petitioner for
May 1966.

44RR. "Dues Structures" for the taxable year beginning
April 1, 1970 as forwarded to the members of The Edison Club.



ROBERT A. FESJIAN,
Counsel for Petitioner,
815 Connecticut Avenue, N.W.
Washington, D.C. 20006.

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

By: 

THEODORE E. DAVIS, Jr.
Assistant Regional Counsel.

P R O C E E D I N G S

2 THE CLERK: Be seated.

3 7828-71, The Edison Club.

4 MR. FESJIAN: Robert Fesjian for Petitioner.

5 MR. DAVIDSON: Jeffrey L. Davidson for the
6 Respondent.

7 MR. GORDON: Barry Gordon for the Respondent.

8 THE COURT: Mr. Fesjian, do you want to make an
9 opening statement?

10 MR. FESJIAN: Yes, Your Honor.

11 THE COURT: All right, you may proceed.

12 OPENING STATEMENT ON BEHALF OF THE PETITIONER:

13 MR. FESJIAN: The Petitioner, the Edison Club,
14 is the taxpayer in this case. The Respondent determined
15 a deficiency for the taxable year 1967 of \$4,630.48, and
16 for 1968 of \$18,537.72. In addition, there is an
17 addition to tax of \$463.05 determined for 1967.

18 During the years in question, Petitioner was a
19 membership corporation under New York law, and has been
20 in existence in one form or another for well over fifty
21 years. For most of the years it has been situated in
22 Rexford in upstate New York, on a tract of land which it
23 presently owns, but which had been owned by the General
24 Electric Realty Corporation until 1968.

25 Over the years, the taxpayer has billed its

1 members monthly, and these billings consisted of both
2 dues, which went to pay the day-to-day operating expenses
3 of Petitioner, and assessments, which went to purchase
4 major capital improvements. The only real issue in this
5 case is whether the amounts that Petitioner has denominated
6 as assessments should be included in Petitioner's gross
7 income as contended by Respondent or should be considered
8 as contributions to capital and hence not taxable, as
9 contended by Petitioner.

10 We intend to introduce testimony of two witnesses,
11 Mrs. Ethel Thackeray, who was the bookkeeper in charge of
12 the books of account of the club during the years in
13 question, and Mr. Walter Kleczek, who was treasurer, a
14 member of the Petitioner's board, and also an ordinary
15 member of the club. We intend to show that at all times
16 during the taxable years in question, the intent of both
17 Petitioner in levying assessments and the understanding of
18 the members when they received their bills was that the
19 amounts denominated as assessments would be used for
20 capital improvements, and hence were capital contributions.

21 That is my opening statement, Your Honor.

22 THE COURT: Thank you. Counsel for the Respondent?

23 OPENING STATEMENT ON BEHALF OF THE RESPONDENT:

24 MR. DAVIDSON: Yes, Your Honor. This case
25 involves the issue of whether the Edison Club during the

1 fiscal years ended March 31, 1967 and March 31, 1968,
2 properly excluded from income as assessments amounts billed
3 to members of the club as dues. It is the position of
4 Respondent that the members of the Edison Club had no
5 knowledge of what their dues payments were to be used for,
6 that is, that they would cover current operating expenses
7 or for the purchase of capital assets.

8 The mere fact that Petitioners characterize a
9 portion of dues billings from members as assessments in a
10 credit balance account is insufficient to exclude these
11 sums from income of Petitioner in each of the years in
12 issue. It is further the position of Respondent that the
13 members of the Edison Club are no more than customers
14 paying for services, and accordingly, any amounts allo-
15 cated to assessments cannot be construed as capital
16 contributions within the meaning of Code Section 118.

17 Also in issue is the delinquency penalty for
18 the fiscal year ended March 31, 1967.

19 That concludes my opening statement, Your Honor.
20 The parties have reached a substantial stipulation in this
21 case. At this time, I would like to introduce the stipula-
22 tion with attached exhibits numbered 1-A through 44-RR for
23 submission to the Court.

24 THE COURT: The stipulation will be received and
25 made a part of the record.

1 Are these the exhibits on this cart that we are
2 talking about, counsel?

3 MR. DAVIDSON: Yes, Your Honor.

4 THE COURT: Well, what the Court proposes to do
5 is, we will put those in one of our trunks at the conclusion
6 of the trial, and if you will give us an itemized receipt
7 for them, we will leave them in your custody here, so that
8 the parties can have access to them, and then after the
9 briefs and all, why, we will have our trunk shipped to
10 Washington.

11 MR. DAVIDSON: Your Honor, that situation would
12 be fine with me, but Mr. Fesjian works out of the
13 Washington office of Baker and McKenzie.

14 THE COURT: Does he? Well, I guess we can ship
15 them down there, then.

16 MR. FESJIAN: Although either way would be fine
17 with us, Your Honor.

18 THE COURT: How would the Respondent have access
19 to them if we shipped them to Washington?

20 MR. DAVIDSON: Well, Your Honor, I have made
21 substantial copies from those portions that --

22 THE COURT: You don't need them any more, then?

23 MR. DAVIDSON: No, Your Honor. I may want to
24 withdraw certain portions, depending on the testimony.

25 THE COURT: Well, we will just ship them down

1 there. Thank you.

2 MR. DAVIDSON: Okay. Your Honor, with regard
3 to the stipulation, I just want to clear up one thing.
4 That is as to Exhibits 33-G through 39-MM. It is
5 Paragraph -- I believe that is Paragraph 16.

6 THE COURT: Sixteen, right.

7 MR. DAVIDSON: Yes, Your Honor. You may have
8 noted that Respondent has not stipulated to the truth of
9 the statements in those exhibits, and we are only
10 stipulating as to their authenticity, that they are
11 letters that were received, and in those cases where
12 there are representations by the Edison Club to General
13 Electric Realty, we will stipulate that those represen-
14 tations were made, but not to the truth of those state-
15 ments, Your Honor.

16 THE COURT: Very good. Thank you.

17 MR. DAVIDSON: Thank you, Your Honor.

18 THE COURT: You may call your first witness,
19 Mr. Fesjian.

20 MR. FESJIAN: I believe, Your Honor, we have
21 two additional exhibits which I believe will be intro-
22 duced as joint exhibits. These were just received an
23 hour ago from the witnesses from Schenectady, and they
24 show the purchase and sale of the premises on which --

25 THE COURT: Suppose we get numbers for those,

1 and they will be received.

2 MR. DAVIDSON: Yes, Your Honor.

3 THE CLERK: Joint Exhibit 45-SS is marked for
4 identification.

5 THE COURT: That will be received, by agreement
6 of the parties. Is that all, just one, or are you going to --

**

7 THE CLERK: And Joint Exhibit 46-TT.

8 THE COURT: That will likewise be received by
9 agreement of the parties. You may call your witness, Mr.
10 Fesjian.

11 MR. FESJIAN: Thank you. I call Mrs. Ethel
12 Thackeray to the stand, please.

13 THE CLERK: You do solemnly swear that the
14 testimony you are about to give to the Court in this case
15 will be the truth, the whole truth, and nothing but the
16 truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Please be seated.

19 THE COURT: Speak up as loud as you can, Mrs.
20 Thackeray, because we have a recording machine, and --

21 THE WITNESS: All right.

22 THE COURT: To make sure it will pick up
23 everything.

24 THE CLERK: Would you state your name and
25 address, please, for the record?

1 THE WITNESS: Ethel Thackeray, Schenectady,
2 New York.

3 E T H E L T H A C K E R A Y, called as a witness, having
4 been duly sworn, took the stand, was examined, and
5 testified as follows:

6 DIRECT EXAMINATION

7 BY MR. FESJIAN:

8 Q Mrs. Thackeray, are you familiar with the Edison
9 Club?

10 A Yes.

11 Q What is the basis of that familiarity, starting
12 from the earliest point in time when you became associated
13 with the club?

14 A I became associated with the club in 1948, as
15 a bookkeeper.

16 Q And how long did you remain a bookkeeper with
17 the club?

18 A Until 1951, when I was made office manager.

19 Q And how long were you office manager?

20 A Until 1948, when I retired.

21 Q 1948 or --

22 A Sixty-eight, pardon.

23 Q Now, since 1968, have you maintained any
24 connection with the club?

25 A Yes, on a part-time basis.

1 Q And what have been your functions since 1968?

2 A In the office, I do the financial statement.

3 Q And from 1951 to 1968, what were your functions
4 then?

5 A I was the office manager, and the office force
6 was under my supervision.

7 Q And were the books of account also under your
8 supervision?

9 A Yes.

10 Q Were you connected with the club in any
11 capacity at all before 1948?

12 A Well, from 1916 to 1931, my husband was a
13 member of the Edison Club.

14 Q And did you have a familiarity with the club
15 at that time? Did you --

16 A The physical layout.

17 Q Yes. Did you attend the club with your husband --

18 A Yes.

19 Q At that time?

20 We have an exhibit, Your Honor, Exhibit 15-0,
21 which is in there somewhere. I have a copy of it here,
22 and if counsel for Respondent does not object, which he
23 doesn't, I will show it -- Mrs. Thackeray, I show you
24 Exhibit 15-0, and in particular Pages 4 through 6 of this
25 exhibit, relating to the history of the Edison Club.

1 Have you seen this booklet before?

2 A Yes, I have.

3 Q And have you seen Pages 4 to 6 before?

4 A Right.

5 Q Are you familiar with the contents of Pages
6 4 through 6?

7 A Yes.

8 Q For the years with which you had any connection
9 with the Edison Club, namely, 1916 through 1931 and 1948
10 to the present day, would this be an accurate summary of
11 the history of the Edison Club, to your knowledge?

12 A Yes, I would say so.

13 Q Thank you.

14 Mrs. Thackeray, are you familiar with the club's
15 billing processes, or were you familiar with the club's
16 billing processes in the years in question, the taxable
17 years ending April -- March 31, 1967 and March 31, 1968?

18 A Yes.

19 Q How exactly were members billed?

20 A A portion of the members had their dues deducted
21 by General Electric Company from their paychecks, and it
22 was transmitted to us in one check for the entire group.

23 Q And approximately what percentage of the members
24 belonged to the G.E. Company and used this payroll
25 deduction method?

1 A I would say better than seventy-five percent.

2 Q Would most members who belonged to G. E. use
3 this method?

4 A Yes.

5 Q I will show you Exhibit 30-DD.

6 30-DD consists of one yellow sheet entitled,
7 Accounts Receivable Ledger, and one white sheet entitled,
8 Statement. Would you explain the relation of these two
9 documents?

10 A One, the statement, went to the member, and the
11 ledger card was kept for our records.

12 Q And --

13 A And these --

14 Q Would these amounts on the statement and on the
15 yellow sheet be recorded at the same time?

16 A That's right, side-by-side posting.

17 Q And that would be done on a special machine?

18 A Right.

19 Q Do you know the name of that machine that was
20 used, by any chance?

21 A No, I am sorry. I don't remember.

22 Q That's okay. Thank you.

23 A We have had several.

24 Q Would the -- Until when was the G. E. payroll
25 deduction plan in effect? Was it in effect during the

1 years in question here?

2 A Yes.

3 Q Would -- When dues and assessments were billed,
4 and I use the characterization, dues and assessments,
5 without any intent to characterize them for the purposes
6 of this case, the members would be sent a dues structure
7 at the beginning of the year. Is that correct?

8 A Yes.

9 Q And that amount would appear on each member's
10 monthly bill as a total. Is that right?

11 A As a total, right.

12 MR. DAVIDSON: Your Honor, maybe counsel could
13 clear up what amount he is talking about. That amount
14 would appear? You referenced the dues structure.

15 BY MR. FESJIAN: (Resuming)

16 Q Oh, I'm sorry. The amount that was listed on
17 the dues structure as the monthly amount payable by the
18 member. Is that the amount that would appear on a bill
19 that was sent to an individual who was not an employee
20 of G. E.?

21 A Yes.

22 Q And do you know, to your personal knowledge, do
23 you know how G. E. evidenced the payroll deduction on its
24 salary checks to --

25 A No, I don't know that.

1 Q Thank you. How often would members be billed?

2 A Members were billed once a month.

3 Q And would all the members be billed at the
4 same time?

5 A No. It was on a third basis, one on the 1st,
6 one on the 10th and one on the 20th.

7 Q And would this be in an alphabetical grouping?

8 A This is right.

9 Q A to G, H to N --

10 A A through G, H through N, O through Z.

11 Q Thank you. Now, when the members paid their
12 bills, how were these payments received?

13 A Either by cash in the office or checks.

14 Q When you received them, how would you record
15 them?

16 A The checks were recorded on one receipt with a
17 detail attached to the back of the receipt, from whom we
18 received the money.

19 Q Okay. I have taken a booklet from Exhibit 32-FF.
20 Are these the typical method that receipts were recorded
21 as they came in?

22 A Yes.

23 Q And I direct my attention specifically to Item
24 664, which -- of Exhibit 32-FF, which indicates, received
25 of, U. S. Mail. What exactly did that mean to you,

1 Mrs. Thackeray?

2 A Well, that was the total amount of money that
3 came in the mail, and the individuals were listed on the
4 tape on the back.

5 Q And there is a tape on the back, here.

6 A That's right.

7 Q So these would be payments by members of their
8 monthly bill.

9 A Right.

10 Q And these would be payments of both amounts that
11 had been charged as dues and assessments and such other
12 items as restaurant bills, drink bills, golf fees and the
13 like?

14 A Yes.

15 MR. DAVIDSON: Objection, Your Honor. Counsel
16 is leading the witness, and he used the characterization
17 there that amounts were billed as assessments, and the
18 witness has already answered that the amount that was
19 billed wasn't characterized at all.

20 THE COURT: I think that was just a misinter-
21 pretation, counsel.

22 MR. FESJIAN: Your Honor, it has been stipulated
23 that whenever dues or assessments are referred to, there
24 is not meant to be any characterization, and I don't mean
25 to characterize them in any way, because that is the

1 ultimate issue in this case.

2 THE COURT: That puzzles me a little, counsel.
3 Just because you call something an assessment doesn't
4 make it an assessment, does it?

5 BY MR. FESJIAN: (Resuming)

6 Q No, I agree with you, Your Honor, but we have
7 to call it something, and the shorthand method is -- is
8 the easiest I can think of. We could call it something
9 else.

10 Now, as the amounts were received and recorded
11 in these small cash receipts books, one of which I just
12 showed you, what would be the next step in your accounting
13 process?

14 A They were recorded in a book of original entry,
15 the cash book.

16 Q And would that be the cash receipts journal?

17 A Right.

18 Q Would that be this Exhibit 14-N?

19 A Yes.

20 Q Now, turning, as an example, to May, 1966,
21 at the end of the month, you apparently total up the
22 amounts. Would these totals be posted to any other
23 journal or book?

24 A They are posted to the journal, the general
25 journal.

1 Q The general journal?

2 A Right.

3 Q I show you on Page 74 of Exhibit 14-N the
4 total for accounts receivable of \$40,872.82. And now I
5 show you Exhibit 11-K, which is, I believe, the general
6 journal. Is that correct?

7 A Right.

8 Q And would you locate the posting of that entry
9 in the general journal?

10 A This is May?

11 Q Yes, May.

12 A What was the amount, \$40,000? Eight --

13 Q And that would be under the heading, Three, on
14 Page 71 of Exhibit 11-K. Would you explain these headings
15 on Page 70 of Exhibit 11-K? There is a heading, One, a
16 heading, Two, a heading, Three, a heading, Four, and we are
17 now on Page 71, a heading, Five. What exactly was the
18 significance of those in your accounting?

19 A Number One is the payment of bills with the
20 checking account.

21 Q And Number Two?

22 A Number Two is our accounts payable.

23 Q And Number Three?

24 A Number Three are cash receipts.

25 Q Number Four?

1 A Those are our receivables.

2 Q And Number Five?

3 A Those are miscellaneous entries.

4 Q And how did you adopt this system of heading
5 them up with numbers like that?

6 A I'm sorry, I don't believe I can answer that.
7 It was just our method of doing it.

8 Q An established operating procedure.

9 A Right. Right.

10 Q Were there any additional numbers beyond five?

11 A Only at year end, and our fiscal year ends in
12 March.

13 Q What numbers would those be?

14 A Six and seven.

15 Q What would six represent?

16 A Six would be closing the expense accounts, and
17 Number Seven is profit and loss, and -- surplus.

18 Q When the receipts were received from various
19 sources, where would they be deposited?

20 A They were deposited in a checking account.

21 Q And only in one checking account or more than
22 one?

23 A Only one.

24 Q Would you recall which bank that was with?

25 A Schenectady Trust Company.

1 Q Thank you. Once the items had been posted in
2 the general journal, would there be any additional posting
3 from the general journal?

4 A From the general journal it went to the general
5 ledger.

6 Q And I point to an additional item that needs
7 explanation. I point on Page 72 of Exhibit 11-K, and the
8 first entry on that page is a debit to deferred income,
9 and there are corresponding credits to dues, pool dues,
10 assessment and tax. Can you explain the significance of
11 that entry?

12 A The deferred income account, those were the
13 people that we billed directly from the office, other than
14 General Electric employees, and they were billed a month
15 in advance, so that dues was a deferred income.

16 Q In other words, these dues were actually
17 received a month prior to the month for which they had
18 accrued?

19 A We are on an accrual basis.

20 Q Right.

21 A And they were accrued.

22 Q In other words, would you have mailed out, say,
23 a bill for June in May to a non-G. E. member?

24 A Right.

25 Q And they would have paid their June bills in May.

1 A Right.

2 Q Assuming they paid on time. When a member was
3 billed with respect to the amounts that are on the dues
4 structures as dues and assessments, a non-G. E. member
5 would be billed only one amount, is that correct,
6 an amount that was --

7 A I -- there is a --

8 MR. DAVIDSON: Your Honor, counsel is leading
9 the witness a bit now.

10 THE COURT: That's all right. He's just --

11 MR. FESJIAN: I am just going through the books.

12 MR. DAVIDSON: Well --

13 BY MR. FESJIAN: (Resuming)

14 Well, was more than one amount billed with
15 respect to the amounts that were described as dues and
16 assessments on the dues structure?

17 A Now, how can I answer that?

18 Q On the actual bill that went to the customer --
19 to the member.

20 A The members of the club who were employed by
21 General Electric Company were not billed.

22 Q I am talking about the non-G. E. members.

23 A The non-G. E.

24 Q And would they be billed just one amount?

25 A That's right.

1 MR. DAVIDSON: Your Honor, I wonder if counsel
2 could clear this up as to reference to non-G. E. members.
3 We stipulated what kind of members there are, and there is
4 no such name as non-G. E.

5 THE COURT: Well, I think, though, counsel --
6 Doesn't counsel acknowledge that apparently with respect to
7 the members who were employees at G. E., why, the employer
8 made out one check to cover whatever their dues and or
9 assessments might be? Is that correct, Mr. Fesjian? Is
10 that what we are talking about?

11 MR. FESJIAN: That is my understanding.

12 THE COURT: Yes. Now, I don't know what their
13 bills would show -- Presumably, they also got a bill,
14 because I guess if they used the club they would sign for
15 something. Isn't that right?

16 MR. FESJIAN: May I ask that of the witness?

17 THE COURT: Yes, let's try and find out.

18 BY MR. FESJIAN: (Resuming)

19 Q Did the G. E. members who paid their bills by
20 payroll deductions also receive monthly bills?

21 A No, they did not.

22 Q Suppose they incurred restaurant expenses and
23 drink expenses. Would they be billed separately then?

24 A They would be billed separately for that.

25 Q But if they didn't incur anything other than

1 the initial dues and assessments, as set forth in the dues
2 structure, they wouldn't be sent monthly bills. Is that
3 correct?

4 A Um-hm.

5 THE COURT: Now, how did General Electric know
6 how much of a check to send in every month?

7 THE WITNESS: The member signed an application
8 authorizing General Electric to deduct x number of dollars
9 from their paychecks.

10 THE COURT: And they did that, then, as long as
11 he didn't revoke it. Suppose somebody was moved. Did he
12 get that cancelled in time?

13 THE WITNESS: I beg your pardon. I didn't
14 understand.

15 THE COURT: I say, suppose one of their employees
16 was sent to Syracuse.

17 THE WITNESS: He would resign from the club.

18 THE COURT: I see. But until he resigned, he
19 was still subject to deductions. Is that right?

20 THE WITNESS: Well, if he had no paycheck, there
21 would be no deduction.

22 THE COURT: So he really didn't have to resign
23 from the club. He was just automatically terminated, then.
24 Is that right?

25 THE WITNESS: Right.

1 THE COURT: Did he actually resign in those
2 cases, or was it just a matter of, since there was no
3 paycheck, no dues were paid? Or do you recall?

4 THE WITNESS: No, I don't recall.

5 THE COURT: All right.

6 BY MR. FESJIAN: (Resuming)

7 Q If an individual left G. E. and did not resign
8 from the club, would you make any effort to bill him
9 separately at that point?

10 A Yes.

11 Q Oh, you would?

12 A Right.

13 Q And these -- suppose the member did not pay that
14 bill. Would that be handled like any other uncollectable
15 account?

16 A This is right, but about that time you would get
17 a resignation.

18 Q Okay. Thank you. Now, in the general journal,
19 on Page 71, under the title of Four, for instance,
20 there is an accounts receivable debit of approximately
21 \$31,000 and there are credits to various items, the first
22 three of which are dues, pool dues and assessment. How
23 were those latter three entries calculated?

24 A That was a board of directors decision.

25 Q But when you sent out bills, did you look to the

1 bills to calculate the dues --

2 A No.

3 Q Pool dues and assessments?

4 A Not until -- let's see -- Yes, as a sum, we did.
5 We separated it in the office.

6 Q You separated it in the office.

7 A Right.

8 Q And did you have any particular procedure by
9 which you --

10 A We use spread sheets to do this.

11 Q I beg your pardon?

12 A We use spread sheets to do this.

13 Q Spread sheets. What exactly would you do?

14 For instance, if I may give you an example, if you had
15 billings and you had ten regular members who, I believe,
16 in the taxable year 1967 were charged assessments of \$4,
17 or they were labeled assessments on the dues structure,
18 and say you had ten associate members who were also
19 charged with assessments of \$4 each, and say you had four
20 house members who were charged with assessments of
21 seventy-five cents each. How would you calculate the
22 amount that would be posted as an assessment on this
23 Page 71 of Exhibit 11-K?

24 MR. DAVIDSON: Objection, Your Honor. Counsel
25 is asking a hypothetical question. We have stipulated to

1 all the books and records.

2 THE COURT: Objection overruled.

3 BY MR. FESJIAN: (Resuming)

4 Q Do you have those facts in mind?

5 A Well, if we had --

6 THE COURT: What was the source of your knowledge
7 in making the split of the gross amount into dues, pool
8 charges and assessments?

9 THE WITNESS: This was a decision of our board
10 of directors.

11 THE COURT: I know it was a decision of the
12 board, but how was that decision communicated to you,
13 every month, or -- when?

14 THE WITNESS: Usually prior to the first of our
15 fiscal year.

16 THE COURT: Prior to the first of the fiscal year.
17 What was the --

18 THE WITNESS: April 1.

19 THE COURT: And how was that decision communicated
20 to you?

21 THE WITNESS: In writing.

22 THE COURT: In writing. Do we have that in the --

23 BY MR. FESJIAN: (Resuming)

24 Q I don't believe we do.

25 Would that writing have consisted of the dues

1 structure?

2 A It -- I thought it was in the minutes.

3 Q But a writing was communicated to you?

4 A Um-hm, and the membership got the letter.

5 MR. DAVIDSON: Your Honor, I cannot hear the
6 witness.

7 THE COURT: You will have to speak up a little,
8 please.

9 THE WITNESS: All right. The --

10 THE COURT: I think it is obvious that somebody
11 had to tell the witness how much to put in each account,
12 and I think the critical question we have, is it not,
13 gentlemen, is, was that done by notification and agreement
14 with the members and with their knowledge, or did the board
15 of directors just decide, well, we'll put \$4 in here and
16 \$5 in here, and we'll call the rest dues?

17 MR. FESJIAN: Your Honor --

18 THE WITNESS: No, the members were informed
19 of this by letter.

20 THE COURT: By letter. I see. That for the
21 ensuing year they would be charged, say, \$60 a month, of
22 which \$5 would be --

23 THE WITNESS: And they were informed of this.

24 THE COURT: Yes. Do we have a copy --

25 MR. FESJIAN: Yes, those exhibits are a part

1 of the record.

2 THE COURT: All right.

3 MR. FESJIAN: Would you like to see one of them?

4 THE COURT: No, that's all right.

5 MR. DAVIDSON: Well, Your Honor, there is a
6 problem here, and that is that in one of the years, the
7 dues structure does not make a listing like that, and the
8 testimony that it was broken up is contrary to the stipu-
9 lation.

10 MR. FESJIAN: That is not necessarily so, Your
11 Honor, and we intend to show that through our next
12 witness when that time comes.

13 THE COURT: Well, now, do I understand you that,
14 in the testimony up until now, Mr. Fesjian, is that
15 equally applicable to the fiscal sixty-seven and fiscal
16 sixty-eight?

17 MR. FESJIAN: What Mr. Davidson just said?

18 THE COURT: The whole -- all that she has said
19 up until now, because you have been -- the testimony has
20 been mainly on the point of the methods she used.

21 MR. FESJIAN: Right. I will --

22 THE COURT: Now counsel for the Respondent
23 objects that the same method was not used in both years.
24 Is that right, Mr. Davidson?

25 MR. DAVIDSON: Yes, Your Honor.

1 MR. FESJIAN: May I ask that of the witness,
2 Your Honor, the best source?

3 THE COURT: Well, I guess the records will have
4 to tell us that.

5 MR. FESJIAN: To the extent the records may be
6 ambiguous, which I believe they are, and perhaps if we
7 could show those two dues --

8 THE COURT: Well, counsel, how can we have any
9 ambiguity as to how the lady knew how much to put in these
10 accounts? Now, either you've got a statement that shows
11 that, or somebody just told her that, and that is apparently
12 what Mr. Davidson objects is one of the critical questions
13 here. In other words, was this structure in such form that
14 it could be constituted a contract with the members, or
15 was this a discretionary allocation made by the directors?
16 Isn't that your real question here?

17 MR. FESJIAN: If it is, Your Honor, may I show
18 you the two dues structures in question? I would like to
19 clarify a lot of what is going on here.

20 THE COURT: Go ahead. That's all right.

21 I would assume, and I direct my inquiry to Mr.
22 Davidson, that if the board of directors had amended the
23 minutes or whatever form was taken to amend the minutes
24 to provide that everybody be assessed \$5 a month and the
25 dues would be \$50 a month, we wouldn't be in Court today.

1 Is that right?

2 MR. DAVIDSON: I'm sorry, Your Honor, I was --

3 THE COURT: I say, if the board of directors, as
4 of the beginning of a fiscal year, had adopted a resolution
5 which was circulated to the members, notifying them that
6 for the next year the dues will be \$500 for the year and
7 the assessment will be \$100, and you will be billed \$50 a
8 month to pay for these.

9 MR. DAVIDSON: That would partially take care of
10 one of our issues, Your Honor.

11 THE COURT: Well, what is the other issue, then?

12 MR. DAVIDSON: Well, Your Honor, there is an
13 issue --

14 THE COURT: The question as to whether or not
15 the extra \$100 was used for the purposes stated. Is that --

16 MR. DAVIDSON: There is that, Your Honor. There
17 is an issue of whether thdse members can make capital
18 contributions at all. There is another issue as to
19 whether the corporation treated these as capital contri-
20 butions.

21 THE COURT: I know, but the facts then have
22 nothing to --

23 MR. FESJIAN: Your Honor, these are the dues
24 structures sent to the members --

25 THE COURT: What you are saying on whether they

1 can make capital contributions at all, you are saying that
2 it isn't a membership club when you say that. Is that
3 right? I mean, that is what you get down to basically.

4 MR. DAVIDSON: Well, Your Honor, we are saying
5 that they are paying for services.

6 THE COURT: A member of a club -- Everybody pays
7 for services, don't they? That doesn't distinguish one
8 from the other, does it? It depends on what your rights
9 and duties are and how you pay for them. Isn't that what
10 we are talking about?

11 MR. DAVIDSON: That's right, Your Honor.

12 THE COURT: All right. Now, is it the position
13 of the Respondent that you have to have a transferable
14 interest to make a capital contribution?

15 MR. DAVIDSON: Yes, Your Honor, that would be
16 one element that --

17 THE COURT: Well, that position would knock out
18 ninety-nine percent of the clubs in the United States, so
19 I think -- I would reject that position offhand.

20 MR. DAVIDSON: Well, Your Honor, we only have
21 one club here.

22 THE COURT: Because while a lot of clubs are --you
23 designated as shareholders, you vote, you elect and all
24 like that, I think you will find very few clubs in the
25 United States where you have a transferable interest.

1 MR. DAVIDSON: That is one element, though, Your
2 Honor, in deciding whether or not there is a capital con-
3 tribution.

4 THE COURT: Well, are you saying that you cannot
5 have a capital contribution unless you acquire a trans-
6 ferable interest in the club? Now, you said --

7 MR. DAVIDSON: No, Your Honor. I said that that
8 was one element. There are --

9 THE COURT: Can that make any difference what-
10 soever, counsel?

11 MR. DAVIDSON: Yes, Your Honor.

12 THE COURT: Why?

13 MR. DAVIDSON: Because -- Well, the nature of a
14 capital contribution as against --

15 THE COURT: Well, if that is true, wouldn't that
16 be equally applicable to Wingfoot, Westchester, Con-
17 gressional Country Club? The only club I know that had a
18 transferable interest was that Edgewater in Chicago that
19 was right down on the near north side, where the property
20 was worth \$10,000 a member or something, but I have never
21 belonged to any other club, and I've belonged to a lot of
22 them, where you had a transferable interest. When you
23 left, you walked away, and that was it.

24 MR. DAVIDSON: Your Honor, I don't want to make a
25 statement about what the taxability of the dues of those

1 other clubs may or may not be, but I think that transfera-
2 bility is one element in deciding whether or not there is
3 a capital contribution, and if those other clubs don't have
4 it, and they don't have certain other things, then they
5 might have a problem.

6 THE COURT: Well, counsel, aren't we at the
7 point of saying -- and maybe you'd better check this with
8 the national office -- at least that this has been going
9 on here for -- since the Day One, and if what you are saying
10 is true, somebody in Washington has been asleep at the switch
11 for the last fifty years, isn't that right, and you just
12 came along here recently. How long have you been up here?

13 MR. DAVIDSON: Well --

14 THE COURT: Now, one at a time.

15 MR. DAVIDSON: I don't know how I'm going to
16 that question, Your Honor, except to say that --

17 THE COURT: I don't, either. I say, you'd better
18 check that with the national office.

19 MR. DAVIDSON: Your Honor, of course, we have
20 been in touch with the national office on this case, and --

21 THE COURT: Well, do they take this position now,
22 or don't they?

23 MR. DAVIDSON: This is our position today, Your
24 Honor.

25 THE COURT: They take the position that unless

1 you have a transferable interest, that these assessments
2 are income?

3 MR. DAVIDSON: No, Your Honor.

4 THE COURT: All right. In fact, they take the
5 opposite, right?

6 MR. DAVIDSON: No, that's not true, either, Your
7 Honor. It is one element.

8 THE COURT: Doesn't the national office take the
9 position that in order for an assessment to be an assess-
10 ment and nontaxable -- and don't ask me why it isn't non-
11 taxable; that's just like the political committees, but
12 anyway, that's been the rule -- you do not have to have a
13 transferable interest as would a stockholder in a private
14 corporation?

15 MR. DAVIDSON: Is it our position that you --

16 THE COURT: That you can have a nontaxable
17 assessment without having a transferable interest. Don't
18 you recognize that?

19 MR. DAVIDSON: Well -- it is our position that
20 the contribution has to be voluntary, and it is our
21 position also that --

22 THE COURT: Do you mean that when the board
23 of directors assess you, whether you like it or not, that
24 that makes it taxable? Because again you are hitting at
25 ninety-nine percent of the clubs in the United States.

1 MR. DAVIDSON: Well, Your Honor, we only have --
2 All I can say about the other ninety-nine is that they
3 are not here today.

4 THE COURT: Well, that is why I am wondering,
5 after all these years. If this was something that you
6 just discovered, or where it came from. I'm going to
7 have to disqualify myself. I have a pretty big interest
8 here myself.

9 MR. DAVIDSON: We haven't asked, Your Honor.

10 THE COURT: Pardon?

11 MR. DAVIDSON: We have not asked, Your Honor.
12 Is there anybody in the Tax Court who doesn't belong to
13 a club, Your Honor?

14 THE COURT: I don't think there's any of them
15 that don't have assessments, and I don't know of any more
16 that you take away a transferable interest any more. That
17 went out a long time ago also.

18 MR. DAVIDSON: Well, Your Honor, on this par-
19 ticular issue, we are relying in part on the United
20 Grocers case, and the --

21 THE COURT: Now, the reason I am trying to do
22 this is, it seems to me that as is frequently the case,
23 a determination is made on one basis and then by the time
24 the case reaches the Court, why, people are reaching for
25 every possible grounds of winning the case, and I don't

1 criticize you fellows for wanting to win. That's what
2 you are hired for. But let's assume, Number One, that
3 if we have a membership club, the members are designated
4 as shareholders, they elect directors, they amend the
5 charter, they vote on everything that the normal charter
6 would entitle them to vote on, adoption of by-laws and
7 the like. Let's say, Number Two, they pay an initiation
8 fee, it's usually called, in order to get in to be entitled
9 to this privilege, which is analogous to the share of stock.
10 Number Three, that by amendment to the by-laws duly adopted
11 and et cetera, whether they like it or not, they can be
12 assessed an assessment for capital improvements, which is
13 not infrequent.

14 Now, those elements standing alone would not
15 make the assessment taxable, would they?

16 MR. DAVIDSON: Well, Your Honor, some of the
17 facts there are different from the facts as I understand
18 them in this case --

19 THE COURT: Well, I know. That's why I --

20 MR. DAVIDSON: You began by saying, members
21 designated as shareholders.

22 THE COURT: I mean, that's just -- they can be
23 designated as -- A shareholder is just a member, you see
24 I mean, what are you --

25 MR. DAVIDSON: But there are no shares in a

1 membership corporation, Your Honor.

2 THE COURT: In 'S. Steel, a shareholder is a
3 member. That's all he is. I mean, we're talking about
4 words, now, you see. We're not --

5 MR. DAVIDSON: No, but --

6 THE COURT: You have all the rights of share-
7 holders except one, and that is to sell your interest.
8 That is the only difference between the club I've said
9 and buying a share of stock in General Electric itself.
10 Right?

11 Now, it was my understanding that the problem
12 here was whether or not, Number One, this was a private
13 club in that sense, and Number Two, if so, whether or not
14 they had adopted the necessary and the requisite resolu-
15 tions to make this an assessment which was limited in its
16 expenditure to a capital improvement, or whether it was
17 an amount that could be spent either way. Now, isn't that
18 what we are talking about?

19 MR. DAVIDSON: No, Your Honor.

20 THE COURT: Then I will have to just be quiet
21 and sit back and listen. Go ahead, Mr. Fesjian.

22 MR. FESJIAN: I believe Exhibit 3-C, which you
23 have, is the structure as sent along with this covering
24 letter of March 8, 1965, which is Exhibit 35-II, and I
25 believe that letter served a dual function, although it is

1 admitted only as to its authenticity as having been sent
2 to the members from the club, and not as to the truth of
3 the matters therein.

4 THE COURT: Now, it was based upon these letters
5 that the treasurer or bookkeeper would, when the checks
6 came in, would decide how much to put in each account. Is
7 that right?

8 THE WITNESS: Not when the checks came in. When
9 they were set up as receivables.

10 THE COURT: When they were set up as receivables.

11 THE WITNESS: Right.

12 THE COURT: All right.

13 MR. FESJIAN: And, Your Honor, to round out --

14 THE COURT: Now, did you have this, did you have
15 a schedule like this for each of the years involved here?

16 THE WITNESS: If the dues structure was changed.

17 THE COURT: It wasn't changed -- Yes, because this
18 is a continuing proposition, right.

19 MR. FESJIAN: Your Honor, to round out the
20 picture, and give Respondent a fair shake, we are showing
21 you the dues structure for the year beginning April 1,
22 1967, which would be the second year in issue.

23 THE COURT: And this doesn't show any -- It
24 shows no assessment, right?

25 MR. FESJIAN: No. However, the letter

1 accompanying that dues structure does note that -- and I
2 point to the first paragraph on the second page of the
3 letter, which I believe is Exhibit 36, I would think,
4 Exhibit 36-JJ.

5 THE COURT: Well, I would say, counsel, that
6 you ought to concede sixty-seven already.

7 MR. FESJIAN: No, that would be sixty-eight,
8 because the first paragraph, as you note, Your Honor,
9 merely says that the --

10 THE COURT: It says that the dues will be the
11 same, the structure will be the same, but clubs may charge
12 the same amount and -- for years we had an assessment at
13 Congressional, and when the time for the assessment ran out,
14 the dues just went up to take up the slack, that's all. In
15 other words, unless you are really billing it as an
16 assessment and putting it into a capital fund and all, just
17 because you had an assessment in one year and you charge
18 the same amount the next year doesn't mean you have an
19 assessment the next year, does it?

20 MR. FESJIAN: No. Well, it may or may not, but
21 we intend to show that there are funds, and that this was
22 a continuing --

23 THE COURT: Well, I don't care whether there are
24 funds or not. You always make capital improvements,
25 normally.

1 MR. FESJIAN: I would agree with that, yes.

2 THE COURT: But the question is whether or not
3 you billed it as --

4 MR. FESJIAN: Well, Your Honor --

5 THE COURT: In the first instance. I think you
6 have to bill it in the first instance, and you have to
7 handle it that way when you get it in the second, but
8 anyway, that's -- Now we see the difference between the two
9 years.

10 BY MR. FESJIAN: (Resuming)

11 Q Mrs. Thackeray, you said that you were told to
12 divide the amounts as they were placed on the accounts
13 receivable between dues and assessments, in accordance
14 with the dues structure.

15 A Right.

16 Q Is that correct?

17 A That's right.

18 Q And again, going back to my example just to show
19 a possible way of doing this, if you had ten regular
20 members in the year 1967, the assessment will show that --
21 the dues structure will show that the assessment was listed
22 as \$4, if you have ten associate members, the assessment
23 for which would also be \$4, and if you had four house
24 members, the assessment for which would be seventy-five
25 cents each, would it be correct to say that the total

1 assessment posted to the general journal, for instance,
2 on this Page 71 of Exhibit 11-K, would that be \$40 plus
3 \$40 plus \$3?

4 MR. DAVIDSON: Your Honor, is this a hypo-
5 thetical, or --

6 MR. FESJIAN: It's the same hypothetical that we
7 discussed earlier.

8 THE COURT: I don't think we need-- Let me ask
9 the witness a question in a minute, here, but let's first
10 get back to these schedules. When was it that the excise
11 tax on assessments went out?

12 MR. FESJIAN: I believe we looked this up, and
13 1966 was the first year when it wasn't effective.

14 THE COURT: And isn't it true, actually, that
15 what you did here, that you had assessments, and when the
16 excise tax went out, you figured that there wasn't any
17 reason any more for distinguishing between assessments
18 and dues?

19 MR. FESJIAN: I don't believe that's true,
20 because later dues structures will show a return to --

21 THE COURT: All right.

22 MR. FESJIAN: And also the board of directors
23 also made changes, or made changes in their allocation
24 of the assessments.

25 THE COURT: Well, let me ask the witness, when

1 the bills went out, then, you set up a receivable. Is
2 that right?

3 THE WITNESS: Right.

4 THE COURT: And that receivable you allocated
5 among dues, and assessments, and pool charges, and social
6 membership, whatever it was. Correct?

7 THE WITNESS: That's right.

8 THE COURT: All right. Now, where did you put
9 the -- Did you carry a special account for the funds that
10 you had in the assessment?

11 THE WITNESS: Yes, we did.

12 THE COURT: I see, and what was that account
13 designated as?

14 THE WITNESS: Assessment, I believe.

15 THE COURT: That was an assessment account. And
16 how did you determine what amounts to credit to that
17 account?

18 THE WITNESS: The number of members involved
19 plus the assessment that was set up --

20 THE COURT: Well, I think they'd call it a
21 debit. Then how would you determine what amounts to
22 debit to that account? In other words, suppose they
23 bought ten new golf carts. Would you debit that to the
24 assessment account, or to your operating account, or where?

25 THE WITNESS: That money was set up in a separate

1 bank account.

2 THE COURT: This amount that you put into the
3 dues was actually set up in a separate bank account.

4 THE WITNESS: Not the dues.

5 THE COURT: I mean, the -- excuse me -- the
6 assessments.

7 THE WITNESS: Right.

8 THE COURT: They were in a separate bank account.
9 Now, how did you determine what should be paid out of that
10 separate bank account?

11 THE WITNESS: Well, either improvements to the
12 club --

13 THE COURT: Or what else?

14 Well, let me put it this way. Who decided
15 what was an improvement? In other words, did somebody
16 tell you what to pay out of that account?

17 THE WITNESS: Oh, yes.

18 THE COURT: I see. Who told you that?

19 THE WITNESS: Well, there was a purchase order
20 with each invoice.

21 THE COURT: So all the purchase orders went
22 out of that account?

23 THE WITNESS: No, the purchase orders were --

24 MR. FESJIAN: Excuse me, Your Honor.

25 THE WITNESS: On the --

1 THE COURT: Now, let's --

2 MR. FESJIAN: Oh.

3 THE WITNESS: On these purchase orders there
4 was a place designated where these things were to be
5 charged.

6 THE COURT: I see, and who put that designation
7 in?

8 THE WITNESS: The person who wrote the purchase
9 order.

10 THE COURT: Well, who had the authority to write
11 the purchase orders?

12 THE WITNESS: Well, let's see. I have to go
13 back, now.

14 THE COURT: Was it the manager, or the chairman
15 of the house committee, or the chairman of the finance
16 committee, or --

17 THE WITNESS: I think it was the board of directors
18 that made this--the treasurer made this decision.

19 THE COURT: The treasurer. So the treasurer
20 would designate on the purchase order as to what account
21 these funds were -- this bill was to be paid from.

22 THE WITNESS: Well, I don't think there was any
23 capital expenditures that hadn't been approved by the
24 board of directors.

25 THE COURT: And all capital expenditures then

1 were paid out of this special account.

2 THE WITNESS: Right.

3 THE COURT: And nothing else was paid out of
4 this special account.

5 THE WITNESS: No. We had a checking account for
6 our --

7 THE COURT: I see, and no money was taken out of
8 this account and put into the checking account.

9 THE WITNESS: Not to my knowledge.

10 THE COURT: So this account, everything that
11 came in as assessments was put in a separate bank account,
12 and that account was used solely for the payment of capital
13 improvements, to the best of your knowledge.

14 THE WITNESS: To the best of my knowledge.

15 THE COURT: Right. All right. Thank you.
16 Go ahead.

17 BY MR. FESJIAN: (Resuming)

18 Q Once the items had been placed in the general
19 journal, they were posted to the general ledger.

20 A Right.

21 Q Is that correct?

22 A That's right.

23 Q Could you explain why the monthly periods in the
24 general journal do not end at the end of the month, but
25 tend to end near the end of the month?

1 A We work on a fiscal calendar, which is a four-week,
2 four-week, five-week, per quarter, and the closing dates are
3 always on a Sunday.

4 Q Thank you. And did you borrow that from General
5 Electric?

6 A This is right. We continued with their fiscal
7 calendar.

8 Q This is the general ledger, Exhibit 8-H, and I
9 am turning to Account 501. Is this the account you
10 referred to when you spoke to -- you answered the Judge's
11 question --

12 A Yes.

13 Q Concerning where assessments were posted in the
14 general ledger?

15 A Right.

16 Q Now, I note that at the top of this account
17 there has been a pencil change. The Assessments, which
18 is in ink, has been crossed out, and the account has been
19 renamed, Capital Improvements, in pencil. Do you know the
20 reason for that change?

21 A Well, the only reason I can give, that we felt
22 that this better designated what the money was for.

23 Q Did you in fact make --

24 MR. DAVIDSON: Your Honor, we object to the
25 answer. The witness was guessing.

1 THE COURT: I don't see that the designation
2 means anything either way, counsel, frankly. Assessments
3 is a fair enough title for the account. It depends on what
4 was paid out of it. That is what we are talking --

5 MR. DAVIDSON: Your Honor, it is a credit balance
6 account. Nothing is paid out of a credit balance account,
7 and in fact there are no debits to the assessment account
8 at all.

9 MR. FESJIAN At the end of the year, I believe
10 there are debits.

11 MR. DAVIDSON: Just that it is closed to --
12 BY MR. FESJIAN: (Resuming)

13 Q I note there are two entries per month generally
14 through this 501 account. What did those two entries
15 represent, if anything, in your mind?

16 A The first entry, this was the billing of
17 General Electric. The second entry was the billing on
18 the non-G. E. cash payment people.

19 Q Thank you. Now, may I have Exhibit 25-Y?

20 I show you Exhibit 25-Y. Have you ever seen
21 this passbook before?

22 A It's our savings bank book.

23 Q And what was the connection between this
24 savings bank book and Account 501, if any?

25 A This is where the money was put.

1 Q What money was put?

2 A For -- Assessment money.

3 Q In other words, the assessment money would be
4 posted from the general journal to the general ledger, and
5 there would also be an actual transfer of funds to this
6 savings bank account --

7 A That's right.

8 Q As evidenced by Passbook 438508. And how often
9 did you make these deposits in the savings bank account?
10 Well, I believe --

11 A Approximately once a month.

12 Q And who told you to make -- assuming -- Did you
13 make these deposits?

14 A Not personally, but I did --

15 Q Was it someone under your supervision?

16 A That's right, I did sign the checks when the
17 transfer was made.

18 Q In other words, did you tell someone to prepare
19 a check and make the deposit?

20 A This is right.

21 Q And who told you to prepare the check and make
22 the deposit?

23 A I don't know who. This was just an understanding
24 as to where this money was supposed to be. It was
25 supposed to be segregated from our checking account.

1 Q Thank you.

2 THE COURT: We'd better take about a ten-minute
3 recess here now, and let the operator reload the machine.

4 (Brief recess.)

5 BY MR. FESJIAN: (Resuming)

6 Q Returning -- Turning now to the disbursements
7 accounting for the club, what -- where would you post
8 the bill when it was received?

9 A In the accounts payable ledger.

10 Q And is that a bound volume, or is that a series
11 of sheets?

12 A Well, it's on spread sheets first before it is
13 put in here.

14 Q I show you Exhibit 43-QQ. Is this a spread
15 sheet?

16 A This is right.

17 Q And I point in particular to the second line,
18 a notation to Walter Sacks. Is that Sacks, or --

19 A Socha.

20 Q Socha.

21 A S-o-c-h-a.

22 Q And there is an entry under Pool of \$5,936.

23 A Right.

24 Q And there is an R before that. What does that
25 R signify, if you know?

1 A I don't know.

2 Q Would you then prepare a disbursements voucher
3 of this sort? This is Exhibit 42-PP which I am showing you.

4 A Yes.

5 Q And to that you would attach the bill as it was
6 sent to you, the bill that is also attached?

7 A Right, and the purchase order.

8 Q And then you would make out a check to the payee,
9 Mr. Socha.

10 A Yes.

11 Q And that check is also attached here, Check
12 Number 38093, which corresponds to the number of the
13 voucher. Did you make a voucher of this type for each
14 check that was made out?

15 A Yes.

16 Q Would these vouchers then -- how would they be
17 entered on your books of account?

18 A Well, a spread sheet was kept by the week,
19 sometimes by the month, and then the totals were put
20 in the disbursement journal.

21 Q I turn now to May, sixty-six, in Exhibit 12-L,
22 which is the cash disbursements book. Now, do you see
23 that particular voucher recorded under May, sixty-six?

24 A Yes.

25 Q And that is under, Swimming Pool, on Page 112 --

1 A Right.

2 Q Of Exhibit 12-L. At the end of the month,
3 where would the totals in the --

4 A The books of original entry were posted to the
5 journal.

6 Q To the journal. And from the journal, they
7 would then be posted to the general ledger?

8 A Yes.

9 Q Now, would the same procedure take place with
10 respect to this exhibit which I show you, 41-00, which is
11 Voucher Number 41423, with a corresponding check attached?
12 Shall we look at March 27, 1968?

13 A Let's look at it and see, please.

14 Q And that is on Page 134. It appears to be the
15 last entry. Is that correct? On the lefthand side.

16 A Yes.

17 Q And do you know what that check was made out for?

18 A That check was a down payment on the purchase
19 of the property from General Electric Company.

20 Q And that purchase took place approximately at
21 that time, March 27, 1968?

22 A March 27.

23 Q So, just summarizing the accounting method,
24 as items came in from third parties, they would be
25 entered --

1 MR.DAVIDSON:Objection, Your Honor. A summary --
2 a leading question. If counsel wishes to -- you know --

3 THE COURT: No, just --

4 MR.DAVIDSON:Ask the witness to summarize.

5 THE COURT: The witness is testifving more in
6 the nature of an expert on these records. She is telling
7 us the effect of the records. Objection overruled.

8 BY MR. FESJIAN: (Resuming)

9 Q As bills came in from third parties, where would
10 they be entered? Would they be entered in books of
11 original entry?

12 A Well, usually on spread sheets, and then the
13 total went to books of original entry.

14 Q Okay, and then from the books of original entry,to
15 where did they --

16 A To the journal.

17 Q To the general journal?

18 A Right.

19 Q And then from the general journal --

20 A To the general ledger.

21 MR. FESJIAN: Thank you. No more questions of
22 Mrs. Thackeray. Your witness.

23 CROSS EXAMINATION

24 BY MR. DAVIDSON:

25 Q All right, Mrs. Thackeray, we will just clear up

1 a few points. Now, how many checking accounts did the
2 Edison Club have in 1966 through 1968?

3 A I believe we had two, one for our expenses and
4 one for our payroll.

5 Q All right. I show you Exhibit 8-H. Would those
6 be account numbers in this general ledger, 010 and 012?

7 A No, 12 is -- that's cash. That's a working fund
8 that we keep at the club.

9 Q You stated that there were two checking accounts?

10 A Yes. I'm sure at that time we had two checking
11 accounts, because we were paying our payroll from the office,
12 and we would just transfer the money from our operating
13 expenses for the amount of the payroll to the payroll
14 account.

15 Q So, now, all the proceeds that came in from dues
16 went into the general checking account. Is that right?

17 MR. FESJIAN: Excuse me, Your Honor.

18 THE WITNESS: No --

19 MR. FESJIAN: Can we clarify what you mean by dues
20 in this particular instance?

21 BY MR. DAVIDSON: (Resuming)

22 Q All right. All the checks, all the receipts from
23 the associate members and what you referred to before as
24 non-G. E. members that would come in, and which you
25 testified you would enter into the cash receipts book --

1 A This is right.

2 Q Pardon me?

3 A That's right.

4 Q Yes, all of that money would be deposited in
5 the general checking account. Is that right?

6 A This is right.

7 Q Okay.

8 THE COURT: In fact, everything that came in
9 went into that. Is that right?

10 THE WITNESS: That's right.

11 MR.DAVIDSON: Okay. So your --

12 THE COURT: Then what would you do, write a
13 check on the general checking account and deposit it in
14 the savings account for capital improvements?

15 THE WITNESS: That's right.

16 BY MR.DAVIDSON: (Resuming)

17 Q All right. Now, isn't it true that the amounts
18 you were instructed to deposit in the savings account,
19 the club purchase account, were the excise tax savings?

20 A Uh --

21 MR. FESJIAN: Excuse me, Your Honor. May we have
22 a clarification of what you mean by excise tax savings?

23 MR.DAVIDSON: Well, the club was no longer paying
24 the excise tax, after -- in the years in issue here, and
25 that was a certain percentage of the receipts of its members,

1 twenty percent, I believe.

2 THE COURT: I believe the witness testified that
3 the amount she put in the savings account was the amount
4 that was designated as assessments here. Isn't that right?

5 BY MR. DAVIDSON: (Resuming)

6 Q I understood her testimony to be that also.
7 Your Honor, we have stipulated to certain vouchers which --
8 yes, it's 31-EE, Joint Exhibit 31-EE, and I am going to
9 show Mrs. Thackeray Joint Exhibit 31-EE, and ask her to
10 note the figures on the front of Voucher Number 41287,
11 and ask her again how the amount was computed for deposit
12 into the savings bank account.

13 A Well, according to this voucher, it is computed
14 at twenty percent, but isn't that in the board minutes?

15 MR. FESJIAN: I don't have the floor.

16 THE WITNESS: Don't know.

17 BY MR. DAVIDSON: (Resuming)

18 Q That figure was twenty percent of what, Mrs.
19 Thackeray?

20 A Well, twenty percent of dues, which was our
21 normal--our former excise tax.

22 Q Okay. Thank you, Mrs. Thackeray. Now --
23 Exhibit 25-Y and 8-H, which is the ledger.

24 THE COURT: Has anybody -- let me ask counsel,
25 both counsel -- has anybody made a reconciliation to show

1 what, as of the end of a fiscal year, whether the so-called
2 assessments which are in dispute here, whether they
3 actually; that amount went into the savings account or not?
4 I mean, I don't know that we need to look at one voucher.
5 The question is whether in fact the two figures conform
6 with each other. Isn't that --

7 MR. DAVIDSON: Your Honor, that's what I was
8 about to do.

9 THE COURT: Well, I know, but all of that -- I am
10 about ready to recess this case to give you people a lot
11 more time to stipulate. Those kinds of figures you don't --

12 MR. DAVIDSON: Well, if counsel would be willing --
13 if counsel --

14 THE COURT: You know the rules, or at least your
15 associate does. You don't get up here on the witness
16 stand and start auditing a set of books. Now, we've got
17 procedures to avoid just that type of trial, and --

18 MR. DAVIDSON: Your Honor, if counsel would stipu-
19 late that the amounts that were deposited --

20 THE COURT: Well, the amounts are a matter of
21 record. You can get a witness up here and testify to it.
22 A Revenue Agent can do that. It's the summation from the
23 books and records. I mean, I don't know the answer yet.
24 That's the thing that disturbs me.

25 MR. DAVIDSON: Well, Your Honor, we --

1 THE COURT: And I can assure counsel that we
2 don't have calculators or adding machines or anything,
3 and our law clerks are notably inept at adding up a
4 column of figures, so --

5 MR. DAVIDSON: Well, Your Honor, we can do that
6 on brief, and show how they are not the same.

7 Your Honor, at this time, I can also draw your
8 attention in Joint Exhibit -- in 18-R, the minutes of
9 the meeting of February 10, 1966, at Pages 2 and 3. There
10 is a notation at the end of Item 6 that the amount
11 deposited in the savings for club purchase will be the
12 savings in the excise tax.

13 THE COURT: Is that the only amount that went
14 into the special account? In other words, were the other
15 amounts that were taken in under the so-called assessments
16 spent for the furnishing of services?

17 MR. FESJIAN: Your Honor --

18 THE COURT: It seems to the Court that these are
19 facts which -- the dye has been cast. There is no use in
20 speculating. These facts are ascertainable by anybody that
21 wants to go in and audit these books with certainty. We
22 don't have to sit up here and try and ask a witness some
23 years hence, based upon one voucher or two vouchers, and so
24 forth, where the amount spent for services -- or did they
25 go into this special capital account.

1 MR. FESJIAN: Your Honor, Petitioner would be
2 willing to let the records speak for themselves at this
3 time, but of course Respondent may have objections.

4 THE COURT: Well, the Court had understood from
5 the witness that these assessments did go into this special
6 savings account. Now, apparently, because of that, the
7 Respondent wants to ask these questions, because presumably
8 the Respondent feels otherwise, I guess, that that isn't
9 correct, but I am not criticizing the witness. She is
10 testifying up here under -- I don't know whether she has
11 ever been a witness before, and she hasn't been playing
12 with these books for a great many years, but we don't need
13 to speculate as to that.

14 It is incumbent, basically, upon the Petitioner
15 to show that the amounts which the Petitioner claims are
16 not taxable here were in fact assessed upon the members or
17 collected from the members not for services but for
18 capital improvements, and in order to perhaps demonstrate
19 the bona fides of it, that they were in fact set aside
20 and spent for that purpose. Now, isn't that right?

21 MR. FESJIAN: That's right, Your Honor. I
22 believe --

23 THE COURT: You accept that burden?

24 MR. FESJIAN: Yes, we have accepted it, and I
25 believe the records show that.

1 THE COURT: Well, if the records show it, they
2 show it.

3 MR. DAVIDSON: Okay, Your Honor, but there was
4 testimony --

5 THE COURT: I know. I say, that's right.
6 I'm not -- I agree that the testimony indicated one thing.
7 Now, the counsel, Mr. Fesjian, says that testimony
8 presumably is correct. Counsel here has referred to some
9 minutes that would indicate maybe in the second year here
10 that they were not following this practice.

11 MR. DAVIDSON: It was in the first year, Your
12 Honor.

13 THE COURT: This was in the first year. I see.

14 MR. DAVIDSON: And it was a continuing practice,
15 Your Honor. I think if I am allowed to go through it with
16 the witness, or I could do it on brief --

17 THE COURT: You go -- Oh, we're going to --

18 MR. DAVIDSON: Or on brief, to show that the --

19 THE COURT: Now that the weather has improved,
20 why, we can stay up here all weekend if you want. I see
21 a gentleman shaking his head back there.

22 BY MR. DAVIDSON: (Resuming)

23 Q Now, Mrs. Thackeray, you testified that with
24 respect to Exhibit 11-K, which is the general journal of
25 Petitioner from April, 1965 to March, 1970, that those

1 entries that were numbered seven were profit and loss
2 entries?

3 (Pause.)

4 A Six are closing entries. Yes, six are closing
5 entries, seven is writing off income to profit and loss.

6 Q Thank you, that was the question. Seven was
7 the profit and loss --

8 A Right.

9 Q Entries. Now, referring to Page 129 of Exhibit
10 11-K, near the bottom, under Number Seven, there was an
11 entry for the 501 account, which is assessments. Isn't
12 that true?

13 A Yes.

14 Q Okay. So then assessments was an account that
15 was written off to profit and loss at the end of a period.

16 THE COURT: Well, it would have to be if you
17 were going to transfer it out, wouldn't it? I mean, I
18 think we are getting into bookkeeping here. We're not
19 getting into substance.

20 BY MR. DAVIDSON: (Resuming)

21 Q Okay. Mrs. Thackeray, isn't it true that only
22 income items are written off to profit and loss? For
23 instance, if an item was purely a capital account, would
24 you write it off to profit and loss at the end of a period?

25 THE COURT: I will sustain an objection to that

1 question, counsel.

2 THE WITNESS: I -- I don't believe I can answer
3 it.

4 MR. FESJIAN: Objection.

5 THE COURT: Sustained.

6 THE WITNESS: I can't answer that. We've
7 changed our system now.

8 MR. DAVIDSON: I ask counsel's basis for his
9 objection.

10 THE COURT: The question relates to how you are
11 going to get this assessment out of your P&L statement.
12 That's all you are talking about. You can do it ten
13 different ways. That is not the question we are talking
14 about here. As a matter of fact, I think the Court right
15 now sees what the problem is here, but the question that
16 I envision that we have to decide here, one, irrespective
17 of what the Respondent may argue, you do not have to have
18 a transferable membership. I checked that during the
19 recess, and I am quite confident on that issue.

20 It gets down to the basic question as to
21 whether or not the amounts were charged for services or
22 whether the amounts were charged as a contribution to
23 capital for improvements, and that goes both with respect
24 to initiation fees as well as with respect to continuing
25 charges.

1 Now, the problem as the Court sees it here is
2 that when the excise tax went out, the club ceased to
3 segregate between dues and the assessments, since the
4 excise tax no longer made such segregation necessary, and
5 we come up with a dues structure effective April 1, 1967,
6 which just shows dues, \$27, and state tax, fifty-four cents.
7 And then, apparently, in the resolution of the board for
8 that year, they said well, we're going to put over in our
9 capital fund the amount of twenty percent that we used to
10 have to pay in excise taxes. Isn't that what happened,
11 Mr. Fesjian?

12 MR. FESJIAN: That is what the resolution says,
13 but I might add that that dues structure that you have in
14 your hand was accompanied by a letter that said, the dues
15 structure has not changed --

16 THE COURT: I know, but that --

17 MR. FESJIAN: And therefore there was no reason
18 for a breakdown.

19 THE COURT: That doesn't mean -- I'm sorry, but --

20 MR. FESJIAN: Well, I believe the cases of --
21 well, Lake Petersburg Association, in any event, will show
22 to the contrary.

23 THE COURT: But now we all agree as to precisely
24 what happened. Right?

25 MR. FESJIAN: Well -- precisely.

1 BY MR. DAVIDSON: (Resuming)

2 Q Mrs. Thackeray, you worked actually at the club
3 during the years in question. That was your testimony at
4 the beginning. Isn't that true?

5 A Yes.

6 Q And should a member call with questions regarding
7 dues, billings, or assessments, or dues structures, that
8 call might be channeled to you. Isn't that correct?

9 A It could very well be.

10 Q Was there ever any confusion among the membership
11 as to the meaning of the word, assessment?

12 A Not --

13 Q I mean, let me ask it this -- Okay.

14 A Not --

15 THE COURT: I can assure counsel that there
16 always is. If you've ever been to a meeting, you know.
17 I've never seen anything yet that there wasn't confusion on.

18 MR. DAVIDSON: All right, let me ask another
19 question.

20 THE COURT: I'm afraid that isn't going to be
21 determinative, either.

22 BY MR. DAVIDSON: (Resuming)

23 Q All right. Did you ever receive a call from a
24 member who mistook assessments for a restaurant assessment?

25 A Oh, no, because our statements were coded.

1 Q I am going to show you Exhibit 9-I, which is
2 the general ledger, with respect to the account for the
3 years 1955 through 1959, Account Number 369. . Would you
4 read the title of that account?

5 A It's restaurant assessed expense. Restaurant --

6 Q Assessed expense. And do you recall whether
7 this was billed to the members?

8 A No, that's not -- that has nothing to do with --

9 MR. FESJIAN: I object, Your Honor. I fail to
10 see the relevance of an entry --

11 THE WITNESS: No.

12 MR. FESJIAN: From ten years ago, or ten years
13 before the taxable years in issue.

14 THE COURT: Objection sustained.

15 BY MR. DAVIDSON: (Resuming)

16 Q Mrs. Thackeray, did any of the bills that were
17 sent to members ever reflect a charge for anything other
18 than dues? Did the word --

19 THE COURT: Counsel, I will have to object to
20 that question. You say, ever. I mean, you can go back
21 to the year 1916. Let's limit ourselves to the years in
22 question here, and I believe you have an example of the
23 bills in the stipulation, do you not?

24 MR. DAVIDSON: Yes, Your Honor.

25 THE COURT: And they speak for themselves.

1 BY MR. DAVIDSON: (Resuming)

2 Q Okay. Mrs. Thackeray, you did not make the
3 penciled change in the 501 account?

4 A I can't remember.

5 MR. FESJIAN: Objection, Your Honor.

6 THE COURT: He asked the witness whether or not
7 she put in the penciled notation in the 501 account

8 MR. FESJIAN: I believe that you --

9 THE COURT: You are not testifying, Mr. Fesjian.

10 MR. FESJIAN: No, objection on the basis that
11 you earlier indicated, that whether it was called
12 assessment or capital improvement --

13 THE COURT: Well, objection overruled. Did you
14 make that change?

15 THE WITNESS: I can't remember that I made that.

16 THE COURT: She can't remember. All right.

17 THE WITNESS: I can't remember.

18 THE COURT: That answers your question.

19 BY MR. DAVIDSON: (Resuming)

20 Q All right. When capital items were purchased,
21 was an adjustment made, ever -- well, during the years
22 in issue, to the assessments account? That's Account 501
23 in the general ledger.

24 A I didn't understand the beginning of the
25 question, sir. Sorry.

1 Q All right. When the club purchased an item
2 that was in the nature of a capital improvement, was any
3 entry made in the assessment account of the club?

4 A I don't recall that there were -- any improve-
5 ments there. The checkbook, or the savings bank book
6 indicates this.

7 Q Okay.

8 THE COURT: Well, now, let's get back again.
9 Is the Court correct in the understanding that you had
10 an account where you tallied up, to get away from this
11 confusion between debits and credits, that you tallied
12 up the assessments and then every now and then or every
13 month you'd write a check and transfer that out to the
14 savings account? Is that right?

15 THE WITNESS: Yes.

16 THE COURT: And then when you got a bill that
17 was marked with the appropriate symbol as a capital
18 improvement, you totaled those up and you put into your
19 general bank account from which you paid all bills an
20 amount from the savings account sufficient to pay
21 for those items. Is that the way you operate it?

22 THE WITNESS: Not then.

23 THE COURT: Well, how did you? In other words --

24 THE WITNESS: We --

25 THE COURT: Say you bought ten golf carts and you

1 only had one bank account, and let's say those were -- Or say
2 you made a down payment on account of the purchase of the
3 real property.

4 THE WITNESS: The money was set aside for the
5 purchase of the property.

6 THE COURT: All right. Suppose you were going to --

7 THE WITNESS: Originally.

8 THE COURT: Did you make any payments at all out
9 of this account during these --

10 THE WITNESS: Not until we -- Not until we made
11 the down payment on the property.

12 THE COURT: Was that in either one of these two
13 years, sixty-seven or sixty-eight?

14 THE WITNESS: No, that was in sixty-eight.

15 THE COURT: Sixty-eight, you made a payment on
16 the property.

17 THE WITNESS: Right.

18 THE COURT: Now, that money came from where?

19 THE WITNESS: This capital assessment account.

20 THE COURT: No, but I mean, out of what bank
21 account did you get that?

22 THE WITNESS: The Schenectady Savings Bank.

23 THE COURT: You took the money out of the
24 savings bank. In other words, you didn't run that through
25 your checking account at all. Is that right?

1 THE WITNESS: It was deposited in the checking
2 account, and a check was written for it.

3 THE COURT: All right, so --

4 THE WITNESS: The same amount.

5 THE COURT: That's right. And that is the only
6 withdrawal that you made out of the savings account then?

7 THE WITNESS: Yes.

8 THE COURT: Well, what about that \$5,000 pool
9 item? Is that out of the savings?

10 THE WITNESS: We paid that out of our operating
11 expenses.

12 THE COURT: Oh, you didn't pay that -- So that
13 actually this assessment account or capital improvement
14 account was strictly for the purchase of the real property.
15 Is that what you are --

16 THE WITNESS: Yes.

17 THE COURT: Nothing else came out of that?

18 THE WITNESS: No.

19 THE COURT: And all the assessments went into
20 that savings account.

21 THE WITNESS: To the best of my knowledge.

22 THE COURT: But in the years sixty-seven and
23 sixty-eight, since there was not a separately stated
24 amount on the bills for assessment, is it correct that
25 what you did in those years was in accordance with the

1 resolution adopted by the board to take twenty percent
2 of the dues and put them into the savings account?

3 MR. FESJIAN: Excuse me, Your Honor --

4 THE WITNESS: I can't remember.

5 MR. FESJIAN: I believe that is only one year
6 where there was no allocation between dues and assessments
7 on the dues structure.

8 THE COURT: I think it was two, but --

9 MR. DAVIDSON: It was one -- There was only one
10 year where there was no allocation on the dues structure,
11 Your Honor, but for the amounts that were deposited in the
12 savings account it is my understanding of the books, and
13 from -- we do have calculators, Your Honor -- and that the
14 amounts that were deposited in this account were twenty
15 percent of dues, and that was the excise tax savings, pur-
16 suant to the minutes of the board of directors.

17 THE COURT: Now, is the Respondent willing to
18 allow this twenty percent?

19 MR. DAVIDSON: To allow, Your Honor?

20 THE COURT: I mean, is the Respondent taxing
21 everything, including the amount that went into the
22 savings account, or are you just taxing them on the --

23 MR. DAVIDSON: We are taxing all receipts from
24 members, Your Honor.

25 THE COURT: Yes, whether or not -- all right.

1 And on these two years, did the Petitioner exclude just
2 this twenty percent, or did they exclude the old breakdown?

3 MR. DAVIDSON: They -- Well, Your Honor, what
4 they profess to exclude was an amount of billings from
5 their members, and the way they picked that amount was
6 the balance in their assessment account, which didn't
7 have anything to do with dollars at all, but was merely
8 a credit balance account.

9 MR. FESJIAN: I object to that characterization,
10 Your Honor, although it isn't testimony.

11 THE COURT: I think this case needs to go out
12 for reaudit. All right, proceed.

13 BY MR. DAVIDSON: (Resuming)

14 Q Mrs. Thackeray, with regard to your entries in
15 the cash receipts book that were marked, U. S. Mail, you
16 would make separate entries for some receipts on a par-
17 ticular day, and then all the others would be lumped into
18 the title, U. S. Mail, in the receipts book?

19 A Yes.

20 Q Okay, and did the title, U. S. Mail, refer only
21 to billings receipts from members?

22 A Yes, it would have to.

23 MR. DAVIDSON: No further questions, Your Honor.

24 MR. FESJIAN: No further questions, Your Honor.

25 THE COURT: Thank you, Mrs. Thackeray.

(Witness excused.)

1
2 THE COURT: You may call your next witness,
3 Mr. Fesjian.

4 MR. DAVIDSON: Your Honor, we ask that Mrs.
5 Thackeray remain in the courtroom. There may be some
6 matters she might be able to clear up after the testimony
7 of--

8 THE COURT: Well, that's fine, if she will.
9 Usually you fellows want to exclude everybody. I have
10 trouble with you on those grounds. I guess you realize
11 my dislike for that.

12 MR. FESJIAN: The next witness for Petitioner
13 is Mr. Walter Kleczek. Mr. Kleczek?

14 THE CLERK: You do solemnly swear the testimony
15 you are about to give to the Court in this case shall be
16 the truth, the whole, truth and nothing but the truth,
17 so help you God?

18 THE WITNESS: I do.

19 THE CLERK: Please be seated. Would you state
20 your name and address for the record, please?

21 THE WITNESS: My name is Walter Kleczek. I
22 live at 1111 Fernwood Drive in Schenectady, New York.
23 W A L T E R K L E C Z E K, called as a witness, having
24 been duly sworn, took the stand, was examined, and
25 testified as follows:

1 DIRECT EXAMINATION

2 BY MR. FESJIAN:

3 Q Would you state your occupation and your
4 employer, Mr. Kleczek, during the years in question here?

5 A Yes, I am an engineering manager with the
6 General Electric Company for the years in question.

7 Q And what is your age?

8 A My age is currently fifty-one.

9 Q Are you familiar with the Petitioner here, the
10 Edison Club?

11 A Oh, yes.

12 Q When was your first familiarity or connection
13 with the Edison Club?

14 A I joined the Edison Club in 1959 as a regular
15 member.

16 Q And could you describe your connection with the
17 Edison Club since that date, 1959?

18 A Yes. Briefly, I believe it was 1961, I was
19 asked to be chairman of the Golf Activities Committee.
20 Also in 1962. In 1963 I was elected to the board of
21 directors for a three-year term, and served as secretary
22 to the board for all three years. I was also on the club
23 Purchase Committee at that time, which was a subcommittee
24 of the board of directors. In 1966, I was not on the
25 board of directors, but I acted in a Constitutional

1 Revision Committee chairman capacity. I have several times
2 been a chairman of various golf events. I have been
3 captain of the golf teams. I was reelected to the board
4 in 1967 for a three-year term, and served as treasurer. I --

5 THE COURT: Let me ask you a few questions, now.

6 THE WITNESS: Certainly.

7 THE COURT: How were the members admitted to the
8 club?

9 THE WITNESS: The members were admitted to the
10 club first by filling an application out which had to be
11 obtained by a regular member. The regular member had to
12 both propose the member and get an additional regular
13 member to sign as a seconder. The process was to submit
14 that application to the board of directors. The board of
15 directors reviewed the application. At that point in time,
16 they would make a cursory examination of the background
17 of the member if they felt it advisable or necessary.
18 They would subsequently invite the member to meet with
19 two or more members of the board of directors, usually for
20 lunch, but perhaps dinner. Following this, the members of
21 the board of directors who had interviewed the prospective
22 member would then report to the board of directors, and the
23 board of directors would act on whether or not the member
24 should be accepted.

25 THE COURT: And that procedure, during the time

1 that you were a director, was followed consistently,
2 whether or not the applicant was an employee of General
3 Electric?

4 THE WITNESS: That's correct. There was a minor
5 change in this some time during the period of time that
6 I served on the board. Instead of the individual luncheon
7 type of thing with one or two members of the board, we
8 changed our procedure because we felt it was in the best
9 interest of our membership. We then instituted a procedure
10 whereby we invited the prospective member and his spouse,
11 if any, to a meeting where all of the board members and
12 their wives would go. It would be a cocktail party type
13 of thing, with hors d'oeuvres --

14 THE COURT: But --

15 THE WITNESS: So that we could intermingle and
16 get a better measure of the member and wife.

17 THE COURT: The fact that an applicant was
18 employed by General Electric did not entitle him to
19 membership per se, then.

20 THE WITNESS: Not per se, no.

21 THE COURT: Right.

22 THE WITNESS: But there was a quota system at
23 that time on G. E. versus non-G. E. members.

24 THE COURT: In other words, you wanted to limit
25 the number of G. E. members, or vice versa?

1 THE WITNESS: Both. We had a limit on the total.

2 THE COURT: All right. Now, how were the
3 directors elected?

4 THE WITNESS: The directors are elected by a
5 nominating committee, first seeking nominees, selecting
6 nominees. Anyone is entitled to voluntarily respond to
7 that nominating committee, either for themselves or for
8 others. The selected nominees, and there must be two for
9 each opening on the board of directors, are then adver-
10 tised at least a month in advance of the annual meeting
11 to the membership by a special bulletin describing the
12 individuals, their relationship with the club, their
13 occupations, their families, generally, something of their
14 background, and the voting session is then initiated one
15 week prior to the annual meeting of the club, which I
16 believe is the first Friday in December.

17 You could vote either in advance of, that is,
18 in that one-week or two-week period prior to, the annual
19 meeting, or at the annual meeting. The votes were
20 counted by a committee established by the acting president
21 at that time, and the new members of the board of directors
22 were announced, and there might have been reelections, as
23 a matter of fact, by the close of the meeting.

24 THE COURT: Now, then, in addition, the club, of
25 course, had both a charter, articles of incorporation,

1 and by-laws. Is that right?

2 THE WITNESS: That's correct, sir.

3 THE COURT: And did the directors have
4 unrestricted authority in adopting by-laws, or under the
5 charter, was there some --

6 THE WITNESS: No. The board of directors were
7 restricted to establishing and modifying by-laws not
8 inconsistent with the constitution. They could not make
9 a constitutional change effectively by a by-law.

10 THE COURT: Well, how was the matter of dues,
11 charges and assessments covered in the constitution?

12 THE WITNESS: The matter of dues, charges and
13 assessments were covered by a statement to the effect that
14 the board of directors would establish this, and it
15 established a time of year. I believe it stated that they
16 had to be established in February, preceding the start of
17 the fiscal year, which would be April 1st.

18 THE COURT: But the board then, would have had
19 the authority under the charter to adopt any dues schedule
20 that they might see fit, and any assessment that they
21 might see fit. Is that right?

22 THE WITNESS: That's correct, sir.

23 THE COURT: Without subjecting it to the vote
24 of the membership.

25 THE WITNESS: That's correct, sir.

1 THE COURT: Were the various types of special
2 memberships you had provided for in the by-laws, or did
3 the articles provide for --

4 THE WITNESS: The constitution specified certain
5 types of membership. The by-laws provided for the junior
6 memberships, which essentially were memberships restricted
7 solely to defined dependents of members of the club, which
8 entitled them to the use of the club under certain con-
9 ditions without being accompanied by a parent. For
10 instance, the junior membership is most popular among
11 youngsters who play golf. It enables them to play golf
12 during special hours without being accompanied by a member.
13 If the junior -- If a dependent did not hold a junior card,
14 they could only play when accompanied by a member, by an
15 adult -- by a parent, excuse me, who was a member, during
16 specified hours.

17 THE COURT: Well, now, did the junior memberships
18 vote, too?

19 THE WITNESS: No, sir.

20 THE COURT: They didn't vote.

21 THE WITNESS: Voting was restricted to the
22 regular membership, initially, and that is -- was defined
23 as employees of G. E. or their affiliated companies. The
24 constitution has subsequently been changed, so that there
25 is no restriction on voting, and there is no restriction

1 on the holding of office.

2 THE COURT: Oh, you say the voting used to be
3 restricted to G. E. employees?

4 THE WITNESS: That's right, sir.

5 THE COURT: Was that during these two years,
6 sixty-seven and sixty-eight fiscal years?

7 THE WITNESS: I believe so, sir. I think the
8 constitution was revised after that date.

9 THE COURT: After that date.

10 THE WITNESS: I think the constitution was
11 revised finally to its present form in sixty-nine, after
12 the club was purchased.

13 THE COURT: That would lead one to believe that
14 as of that time, what the club really was was an adjunct
15 of the General Electric, and that the outside members
16 were perhaps to provide a little variety, and to fill in
17 the ranks. Is that right?

18 THE WITNESS: Well, I don't know what that might
19 lead one to believe, but the club's history certainly is
20 traced very closely to the General Electric Company. It
21 is now totally separated from the General Electric Company.
22 I could give you some details of that, if you wish, but
23 they are in -- that little blue book that was referred to
24 earlier.

25 THE COURT: Right. You may proceed, Mr. Fesjian.

1 BY MR. FESJIAN: (Resuming)

2 Q You mentioned, Mr. Kleczek, that there was no
3 limit on assessments that might have been levied by the
4 directors.

5 A There were no limit on assessments which the
6 directors could levy while I was serving on the board.

7 Q Perhaps to refresh your recollection, this is
8 Exhibit 15-0, which is the constitution and by-laws at
9 the time in question, and I refer you to Article 5-D-1.
10 Does that --

11 A I'm sorry, I stand corrected. That has been
12 removed from the present constitution. It was present then.

13 Q All right. Thank you.

14 A There was an annual --

15 THE COURT: Let me see what that provides, then.

16 THE WITNESS: There was an annual limit --

17 MR. FESJIAN: That's the fact that the --

18 THE COURT: Which article is that?

19 MR. FESJIAN: Well, it is on Page 22, Article
20 5-D-1.

21 THE COURT: Page 22.

22 So, the assessment up to the \$100 the board had
23 full discretion. Anything over \$100 would have to be
24 submitted to the membership. We are not dealing with any
25 amount over \$100 here, are we?

1 MR. FESJIAN: No, Your Honor. The maximum is
2 \$4 a month.

3 THE COURT: Right. All right. Thank you.

4 MR. FESJIAN: May I continue?

5 THE COURT: You may continue.

6 BY MR. FESJIAN: (Resuming)

7 Q When were the elections for the board of
8 directors held, what time of year?

9 A The election for the board of directors was
10 held in the week preceding the annual meeting, and the
11 election was closed by motion at the annual meeting that
12 the voting for election should be closed, which was always
13 the first week in December, I believe the first Friday in
14 December of each year.

15 Q And would the directors take office immediately
16 after that?

17 A The directors would take office immediately.
18 Normally the procedure was that the Sunday following the
19 annual meeting, the directors would meet, and at this
20 point in time the directors themselves, the new directors,
21 would vote to elect their own officers.

22 Q You mentioned a Club Purchase Committee earlier.
23 What was the purpose of that committee?

24 A The Club Purchase Committee was initiated, I
25 believe, in 1963, although I'm not certain of that date,

1 because at that point in time, we were contemplating an
2 increase in capital improvements that --

3 MR. DAVIDSON: Objection, Your Honor. We have
4 the --

5 THE COURT: Overruled.

6 MR. DAVIDSON: We do have the minutes from those
7 meetings, Your Honor.

8 THE COURT: Go ahead.

9 THE WITNESS: I'm sorry. You broke my train of
10 thought.

11 BY MR. FESJIAN: (Resuming)

12 Q We had asked you about the --

13 A Oh, the Club Purchase Committee. We, in 1963, I
14 believe, wrote correspondence to the General Electric
15 Company, and I was the secretary and had the responsibility
16 for that, relative to the fact that we were interested in
17 expending something on the order of \$100,000 for capital
18 improvements at the club from the membership. Our lease
19 with the General Electric at that time had a very few years
20 to run, one or two, I believe, and at that time we were
21 requesting an extension on that lease to make certain
22 that we would as members enjoy the benefits of these
23 capital improvements before we went ahead with the action.

24 And the club -- the response at that time was
25 that they would give us the lease, but that the Edison Club

1 membership should start thinking about purchasing the
2 Edison Club some time in the future, because the company
3 was at that point in time considering divesting itself of
4 all its association with other clubs.

5 Q And were there any further negotiations with the
6 General Electric Company or its subsidiary, the General
7 Electric Realty Corporation?

8 A The subsequent -- Yes, we ultimately bought the
9 -- the club property from the General Electric Realty
10 Corporation.

11 Q And approximately when was that? When was the
12 purchase date?

13 A The purchase, I believe, was in late March of
14 1968.

15 Q May I have Exhibits 37-LL through 39-MM?

16 I show you these three letters, 37-KK, 38-LL
17 and 39-MM. Your signature, I believe, appears on each of
18 these. Did you write these letters?

19 A Yes, sir, I did.

20 Q And would you say that at the time you wrote
21 them you believed the statements in them to be true?

22 A Yes, sir.

23 MR. FESJIAN: Your Honor, I would like to
24 introduce these letters, which I believe were objected
25 to at the beginning of the trial, as to their truth

1 therein, by the Government counsel. We wish to overcome
2 the hearsay objection which I believe was the basis for
3 the objection.

4 MR. DAVIDSON: Your Honor, the witness has not
5 testified that he has no present recollection of these
6 events, and these -- if they were to be entered for the
7 truth of the statements -- would be mere substitutes for
8 testimony.

9 THE COURT: The witness has signed these letters,
10 counsel.

11 MR. DAVIDSON: Pardon me?

12 THE COURT: He signed these letters.

13 MR. DAVIDSON: Yes, Your Honor. We have already
14 stipulated to their authenticity, that they were
15 written, that they were received by the addressed party,
16 that these --

17 THE COURT: Well, doesn't the witness recollect
18 whether or not, in signing these letters, was this window-
19 dressing, or was this --

20 THE WITNESS: No, sir, that was the truth.
21 That's what I just said.

22 THE COURT: All right. They will be received
23 as such.

24 THE WITNESS: Thank you.

25 BY MR. FESJIAN: (Resuming)

1 Q Do you recall how much was the purchase price?

2 A I think the final purchase price agreed to was
3 \$475,000.

4 Q And how was that to be paid?

5 A We paid, I believe, \$70,000 as a down payment,
6 at the time of the transaction. The balance was to be
7 paid as a mortgage held by the G. E. Realty Corporation
8 at the current prime interest rate to be paid quarterly,
9 not to exceed x dollars, and I don't remember what x was.

10 Q And did you foresee a continuing need for
11 funds to pay this mortgage, into the near future, say,
12 ten years?

13 MR. DAVIDSON: Your Honor, I object. What this
14 witness foresaw is certainly not relevant to this pro-
15 ceeding.

16 THE COURT: Overruled.

17 THE WITNESS: Yes, there was certainly a need
18 to pay off the principal and the interest. We had an
19 obligation to purchase the club, and had we failed that,
20 we'd have gone bankrupt or lost our mortgage or fore-
21 closed it, like any homeowner or anyone else.

22 BY MR. FESJIAN: (Resuming)

23 Q How did you intend to -- or how did you plan to
24 meet these payments in the future?

25 THE COURT: Let's ask first if there was a plan,

1 counsel.

2 BY MR. FESJIAN: (Resuming)

3 Q You foresaw a continuing need for funds. Was
4 there a specific plan established to make payments on this
5 mortgage?

6 A Yes. The plan in fact --

7 THE COURT: Well, who established the plan, then?

8 BY MR. FESJIAN: (Resuming)

9 Q Yes, and --

10 A The plan --

11 Q What was that plan?

12 THE COURT: Let's find out first who established
13 it.

14 BY MR. FESJIAN: (Resuming)

15 Q Oh, I'm sorry. Who established that plan?

16 A The plan for repayment of the total purchase
17 price of the club, including interest, was established
18 by the board of directors, and it --

19 THE COURT: Was that incorporated in one of the
20 minutes of the board?

21 THE WITNESS: I am quite certain that it is.
22 I couldn't quote the specific instance.

23 THE COURT: All right. Then that would be the
24 best evidence, counsel.

25 BY MR. FESJIAN: (Resuming)

Q Yes, Your Honor.

1 In anticipation of the down payment with respect
2 to the purchase, did you -- did the board make any plans
3 as to setting aside funds for that purchase?

4 MR. DAVIDSON: Your Honor, we object to this.

5 THE COURT: Wait a minute. This is just a yes
6 or no answer.

7 MR. DAVIDSON: But, Your Honor, the minutes of
8 the board of directors' meetings would reflect this.

9 THE COURT: Well, I know, but let's find out.
10 Maybe the minutes don't show anything, in which event he
11 is answering no. Isn't that right?

12 MR. FESJIAN: Right.

13 THE COURT: Well, let's -- yes or no, did the
14 board make a plan of --

15 THE WITNESS: Yes, the board initiated this plan
16 back in 1963, when they set up a Club Purchase Committee.

17 THE COURT: Right.

18 THE WITNESS: This was the initiation of such a
19 plan.

20 BY MR. FESJIAN: (Resuming)

21 Q I show you Exhibit 25-Y, which is the
22 Schenectady Savings Bank account. Are you familiar with
23 this passbook?

24 A I am familiar with its existence. I am not
25 familiar with the details of the entries or withdrawals.

1 for the --

2 Q Do you know if the board authorized the
3 establishment of that account?

4 A Yes.

5 Q Do you know the purpose of the establishment of
6 that account?

7 MR. DAVIDSON: Objection, Your Honor.

8 THE COURT: Well, he is still getting a yes or no.

9 MR. DAVIDSON: Well, Your Honor, what the
10 purpose was as established by the board --

11 THE COURT: Overruled. Overruled.

12 MR. FESJIAN: Your Honor, if I may add at this
13 point, to the extent any of the minutes may be ambiguous,
14 I believe this testimony will --

15 THE COURT: Well, we are just getting a yes or no
16 answer. If the minutes are ambiguous, I don't know that
17 he can testify any more than the minutes. Maybe if you
18 had two other directors, they would testify differently.
19 Isn't that right?

20 MR. FESJIAN: Yes, and if we had six bishops,
21 they might testify differently, too.

22 THE COURT: That's right. So --

23 BY MR. FESJIAN: (Resuming)

24 Q What was the purpose of that account?

25 A The purpose of that account was to establish an

1 escrow funds for the purchase of the club.

2 THE COURT: I don't think, counsel, that -- at
3 least I hope there isn't any problem with having an escrow
4 fund. The problem is that you could have made a profit and
5 paid the tax and put it into the fund, and it would be just
6 as valid. Isn't that right?

7 BY MR. FESJIAN: (Resuming)

8 Q Yes, right, Your Honor. I am getting to that,
9 in a moment.

10 Would the board keep track of the amounts that
11 were deposited into that savings account?

12 A Yes.

13 Q And how would they keep track?

14 A They would be informed on a monthly basis by a
15 balance statement which was issued to each member of the
16 board prior to the meeting, the monthly meeting of the club --
17 board of directors.

18 Q Turning now to the dues structure, who established
19 the dues structure?

20 A The dues structure is established by the board
21 of direcotrs.

22 Q And I believe you said it had to be established
23 by February of the year --

24 A That's correct. I believe it's February of each
25 year, the constitution specifies that the dues for the

1 ensuing year shall be established by the board of directors.

2 Q What procedure was involved in determining how
3 much the dues and assessments would be as reflected on the
4 dues structure?

5 A During --

6 MR. DAVIDSON: Objection, Your Honor. The minutes
7 would set forth this --

8 THE COURT: Well, let's find out first what went
9 on.

10 THE WITNESS: During the period in which I was
11 active on the board, the procedure was for approximately
12 January 1 or immediately thereafter, the board would con-
13 vene for the purpose of establishing a budget for the
14 future year. One of the ultimate aims of that budget was
15 obviously what shall this dues structure be, or the charges
16 to the membership. The procedure for doing this was that
17 each individual board member had been assigned responsi-
18 bility by the president of the board, who had been elected
19 by that board, to various areas of responsibility within
20 the club.

21 For instance, one man might have house activities,
22 another, tennis and pool, and third, golf activities,
23 capital improvements, grounds and building maintenance,
24 employee relations. The secretary and treasurer had their
25 own duties, and generally were not involved in those other

1 assignments. Each sponsoring director, then, for a given
2 area of activity would review with the manager of that
3 activity --and it might be the same manager in many areas --
4 what the needs would be for that year, on both an expense
5 operation and a capital improvements operation: What are
6 we going to have to replace, what are we going to add,
7 what is it going to cost us for labor, and so forth.

8 They would submit their individual proposed
9 budgets for their individual operations to the treasurer.
10 The treasurer would compile these, and usually it resulted
11 in a rather ghastly reaction when it was all totaled,
12 because everybody asks for more than is available.

13 There were probably several regenerations of
14 this particular initial budget prior to the time that it
15 was settled down and approved, but in this process, the
16 moneys were essentially allocated in the future budget for
17 both operation of the club, anticipated revenues from
18 various areas in the club, various activities, including
19 greens fees, locker fees, everything else, assessments,
20 what we were going to do in the way of capital improve-
21 ments to the club. We had to take recognition of what
22 our union contract specified in terms of scheduled
23 increases and this sort of thing, and finally arrive at
24 a final budget, and at that time establish the dues -- the
25 dues structure, if you will, the charges, the dues, the

1 assessments, the taxes, the rates for each class or
2 category of membership, if it was to be changed, and we
3 would issue that as part of the letter that the president
4 issued annually welcoming members to the new season.

5 THE COURT: Now, apropos of that answer, counsel,
6 and I think we are getting a lot of information, but I
7 don't know that it has any relevancy to the question we
8 have, the witness is speaking of capital improvements. It
9 is the Court's understanding that the only capital improve-
10 ment we are considering here is one, namely, the purchase
11 of the real estate. Isn't that right?

12 MR. FESJIAN: No, Your Honor. We --

13 THE COURT: Well, it was in the witness's
14 testimony, the prior witness's, that the only thing that
15 this fund was to be expended for was the purchase of the
16 real estate. Isn't that right?

17 MR. FESJIAN: Your Honor, we intend to also show
18 that the club had a capital improvements program which was
19 separate from --

20 THE COURT: Well, every club has, counsel.

21 MR. FESJIAN: Right, and --

22 THE COURT: I don't know of any club that --
23 Some of it, you also have depreciation, don't you, and --

24 MR. FESJIAN: That's right, you have
25 everything that --

1 THE COURT: But isn't it true that the only fund
2 we are talking about here is the fund that went into this
3 special bank account for the purchase of the real estate?

4 MR. FESJIAN: Your Honor, again, if you are
5 taking a straight earmarking theory, that may be true, and
6 we don't necessarily feel that once the money is taken in
7 as assessments it has to be accounted for precisely in the
8 books, so long as at the end of the year --

9 THE COURT: What you are saying, counsel, is
10 that --

11 MR. FESJIAN: An amount greater than the
12 assessments taken in --

13 THE COURT: Suppose the club says, we're going
14 to charge you \$60 a month to be a member. I don't care
15 what we call it. We'll just call it membership, \$50 a
16 month, that because they spend \$10 of that \$50 on golf
17 carts, that that \$10 becomes a capital improvement fund,
18 an assessment, or whatever you want to call it, a contri-
19 bution to capital?

20 MR. FESJIAN: No, we are not contending that,
21 Your Honor.

22 THE COURT: Well, that's about what you -- in
23 substance, what you have been saying, isn't it?

24 MR. FESJIAN: No, what I am saying is, at the
25 beginning of the year, certain amounts were taken in as

1 assessments, and during the year amounts were paid --

2 THE COURT: At the beginning of the year, you
3 decide you are going to have to buy ten new golf carts, then.
4 I will modify my example.

5 MR. FESJIAN: That's right, and --

6 THE COURT: And you say, in order to operate this
7 year, we are going to need \$60 per month per member. Now,
8 because in that \$60 you include the purchase of ten new
9 golf carts, do you mean to tell me that you would call
10 that a contribution to capital?

11 MR. FESJIAN: That is not the case before us,
12 Your Honor.

13 THE COURT: It is awful close, I'm afraid.

14 MR. FESJIAN: I don't believe so. We have the
15 dues structures that show an allocation.

16 THE COURT: All right, how's your tape there?

17 THE REPORTER: I have about five minutes.

18 THE COURT: Yes, we'd better let you charge your
19 tape again.

20 (Brief recess.)

21 THE CLERK: Be seated.

22 BY MR. FESJIAN: (Resuming)

23 Q Mr. Kleczek, you stated that these dues
24 structures were circulated to the members before the
25 beginning of the fiscal year. Is that correct?

7
1 A That's correct. The practice at the Edison
2 Club is for the president to issue a welcoming letter
3 for the new season to the members, frequently stipulating
4 the things that have been accomplished in the past year,
5 and sometimes what they expect to accomplish in the next
6 year, and the dues structures or changes would be included
7 in that letter.

8 Q And would these two letters be such letters,
9 Exhibits 35-II and 36-JJ?

10 A Yes, sir, they are.

11 Q Did you receive one of these letters, do you
12 recall?

13 A Yes, sir.

14 Q I show you specifically the dues structures,
15 Exhibits 3-C and 4-D. On 3-C, there is a proposed dues
16 structure to be effective 4/1/66, and there is an assess-
17 ment listed for regular and associate members, for
18 example, of \$4 each.

19 A Um-hm.

20 Q As a board member, when you prepared or helped
21 to prepare the dues structure, for what purpose did you
22 think that the amounts received with respect to that
23 assessment would be used?

24 MR. DAVIDSON: Objection, Your Honor.

25 THE COURT: Sustained.

1 MR. FESJIAN: Your Honor, to the extent that
2 the minutes may not fully cover this particular purpose,
3 question, I would request that this testimony be let in.

4 THE COURT: Well, counsel, what this witness
5 may have thought, that may not have been shared with the
6 other directors, even. In other words, the fact that this
7 witness may have thought the money was going to buy the
8 back forty acres doesn't make that any more or any less
9 dues or an assessment, and it is on that basis that the
10 Court has sustained the Respondent's objection.

11 MR. FESJIAN: May I make an offer of proof, then,
12 Your Honor?

13 THE COURT: You may.

14 BY MR. FESJIAN: (Resuming)

15 Q Repeating the question, for what purpose was this
16 \$4 -- If this \$4 had been collected from the members, for
17 what purpose did you think it would be used?

18 A I think it --

19 MR. DAVIDSON: Your Honor -- You were making
20 that as an offer of proof.

21 MR. FESJIAN: Well --

22 THE COURT: I don't see any \$4 there, counsel.
23 We are talking about the year in which it was merged in
24 one, aren't we?

25 MR. FESJIAN: No, we are talking about 3-C,

1 which is the year beginning 4/1/66.

2 THE COURT: All right. You had an assessment
3 figure in that figure, right?

4 MR. FESJIAN: Right, of \$4.

5 THE COURT: And that was authorized by the board
6 of directors at some time, I guess. It must have,
7 according to the charter.

8 MR. FESJIAN: Yes, and according to the testimony.

9 THE COURT: Well, the charter is the only thing --
10 That was authorized apparently at some meeting prior even
11 to 1967, was it not?

12 MR. FESJIAN: Yes, Your Honor. It was in a letter --

13 THE COURT: Well, it had to be authorized in the
14 minutes. It couldn't -- You can't raise the dues by
15 assessments or vary them by letter, counsel, can you?

16 MR. FESJIAN: I am not saying that they were.
17 I am asking what the purpose of --

18 THE COURT: Well, the purpose -- Let's find out
19 what the board stated the purpose to be when they first
20 put on the assessment.

21 MR. FESJIAN: I believe that is shown, to
22 whatever extent it is shown, in the minutes.

23 THE COURT: You mean there is nothing in the
24 meeting of the board of directors designating that this
25 assessment was for any purpose?

1 MR. FESJIAN: I believe there may be some
2 references, but they may not be as voluminous or as
3 explanatory as Mr. Kleczek's testimony.

4 THE COURT: Well, counsel, it doesn't have to
5 be voluminous. As I read the articles of incorporation,
6 the board can establish dues and they can establish
7 assessments.

8 MR. FESJIAN: Yes.

9 THE COURT: Now, if they established an assess-
10 ment, they had to do it by board action.

11 MR. FESJIAN: Yes.

12 THE COURT: And when did that board action take
13 place?

14 MR. FESJIAN: If -- Mr. -- please --

15 THE WITNESS: It would be established --Excuse me.
16 If I may, it would be established in the minutes of the
17 meeting at which the budget was adopted. Normally, the
18 budget and dues structure would be adopted as final in
19 the same meeting.

20 MR. FESJIAN: May I make my offer of proof now,
21 Your Honor?

22 THE COURT: Well, I'm not so sure that just
23 adopting the budget, counsel, meets the articles of
24 incorporation as the Court would interpret them. I think
25 the important thing is to find out when the club first

1 went the assessment route, whether the board -- did the
2 minutes say anything then.

3 MR. FESJIAN: Well, Your Honor, this -- Well, I
4 can ask Mr. Kleczek that. I will ask him that.

5 THE COURT: Well, don't we have the minutes in?
6 Do we have the minutes --

7 MR. FESJIAN: The minutes are in, but --

8 THE COURT: The minutes don't say anything about
9 why they adopted an assessment route, it seems.

10 MR. FESJIAN: Well, we only have the minutes
11 from 1961 on.

12 MR. DAVIDSON: We have certain minutes from
13 1959.

14 MR. FESJIAN: Right, three sets of minutes from --

15 THE COURT: Well, did the assessments precede
16 1961?

17 MR. FESJIAN: Yes. I believe one indication
18 when they began was in 1959.

19 THE COURT: 1959. Was that the first time you
20 had something called an assessment?

21 MR. FESJIAN: Perhaps we should ask Mr. Kleczek
22 that, because I don't know.

23 THE COURT: I don't know whether he knows.

24 THE WITNESS: I don't know, sir. I joined the
25 club in fifty-nine, in June.

1 BY MR. FESJIAN: (Resuming)

2 Q Did they have an assessment program then?

3 A I can't speak with certainty. My memory is not
4 that clear on that detail.

5 THE COURT: Well, when did this special account
6 first come into being, the savings account?

7 MR. FESJIAN: I believe the record shows
8 February, 1966.

9 THE COURT: I see.

10 BY MR. FESJIAN: (Resuming)

11 Q In any event, if I may make my offer of proof,
12 as a board member, when you voted on dues structures,
13 what did you believe amounts listed as assessments would
14 be used for?

15 MR. DAVIDSON: Your Honor, that is not a proper
16 offer of proof.

17 THE COURT: Respondent's objection is sustained.
18 Now, where was there submitted to the board a budget
19 showing amounts listed as assessments?

20 MR. FESJIAN: Well, I could look through the
21 minutes, Your Honor. If I don't find it, does that mean
22 that the club has no authority to make these assessments?

23 THE COURT: As assessments, no, I don't think so.

24 MR. FESJIAN: Then what is -- I fail to see the
25 point.

1 THE COURT: What the Court is pointing out,
2 counsel, is that as the Court reads the articles of
3 incorporation, the board can set dues and they can set
4 assessments. For purposes of the article of incorporation,
5 dues are one thing, assessments are something else. Now,
6 at some stage, the board has to decide x dollars are going
7 to be the dues and y dollars are going to be assessments.
8 Isn't that right?

9 MR. FESJIAN: And I believe Mr. Kleczek
10 testified that that would happen some time before February.

11 THE COURT: All right. Well, then, it should be
12 in the minutes.

13 BY MR. FESJIAN: (Resuming)

14 Q Would that be in the minutes, Mr. Kleczek?

15 A Yes.

16 MR. FESJIAN: Do you want us to look through the
17 minutes, Your Honor?

18 THE COURT: No, they're in the record. Let them
19 speak for themselves.

20 MR. FESJIAN: But then how will I show the
21 extent that there may have been a purpose beyond what is
22 reflected in the minutes? How will I show that extra
23 purpose if I am not permitted an offer of proof?

24 THE COURT: Well, I don't know how you can by
25 one witness, counsel.

1 MR. FESJIAN: I was just asking him to testify
2 as to how he would testify to an objected question, so
3 that if any error has been committed, although I hope it
4 hasn't, that --

5 THE COURT: Well, what you are asking this wit-
6 ness, as the Court understands it, is what did he think
7 the purpose was in providing that the members would be
8 charged so much a month. Isn't that right?

9 MR. FESJIAN: For assessments, yes.

10 THE COURT: Well, I don't know that it even
11 provided for assessments. That is what is puzzling.

12 MR. FESJIAN: Well, we have these exhibits in
13 the record, Your Honor.

14 THE COURT: What did he think this was for.
15 Is that the question?

16 MR. FESJIAN: Yes. Yes, exactly.

17 THE COURT: All right. The Respondent objects
18 to that and the Court sustains the objection on the
19 grounds that the personal view of the witness is irrelevant
20 and immaterial. Now, you want to offer his personal view,
21 so let him answer that, subject to objection as a proffer
22 in proof.

23 BY MR. FESJIAN: (Resuming)

24 Q Okay. Would you answer that question, please?

25 A I think I understand the question. It is my

1 personal opinion at this time that the amounts described
2 as assessments in the dues structure were for the purpose
3 of collecting funds to provide capital improvements to the
4 total facility of the Edison Club for the enjoyment of the
5 members.

6 Q Again, what is your -- what do you believe is a
7 capital improvement, if you can categorize that, Your Honor.

8 MR. DAVIDSON: Objection, Your Honor.

9 THE COURT: This is still subject to objection.

10 MR. FESJIAN: Oh, this is still subject to
11 objection? This is a new question, Your Honor.

12 THE COURT: All right. Do you object to that,
13 counsel?

14 MR. DAVIDSON: Yes, Your Honor, on the same basis.

15 THE COURT: Sustained.

16 MR. FESJIAN: May I have the basis for that,
17 Your Honor?

18 THE COURT: Well, it relates to his prior proffer
19 in proof, doesn't it?

20 MR. FESJIAN: Well, I am asking him a question --

21 THE COURT: We only get there by reason of a
22 prior question which the Court sustained the objection to.

23 MR. FESJIAN: Your Honor, I think in the record
24 there is some mention of capital improvements and how they
25 were used to determine what the assessments would be.

1 I am asking this witness --

2 THE COURT: I don't know -- If it is, then let
3 the record speak, counsel.

4 MR. FESJIAN: Well, I am asking him for his
5 definition of capital improvements.

6 THE COURT: All right. What is your definition
7 of capital improvements?

8 THE WITNESS: An increase in the facility of
9 generally a physical nature, of the total property or
10 equipment at the Edison Club, which is put there for the
11 improvement of the club function to serve its membership.

12 THE COURT: Now, in that definition, do you
13 distinguish between replacing a furnace and adding an
14 air conditioning unit?

15 THE WITNESS: Adding an air conditioning unit
16 would be a capital improvement. Replacing a furnace or
17 repainting the walls would be a maintenance item, in my
18 opinion.

19 THE COURT: Now, were there separate accounts
20 kept for each of those, to your knowledge?

21 THE WITNESS: We had depreciation accounts for
22 replacement of equipment. I am certain of that because
23 we kept a schedule of this.

24 THE COURT: And what did you have in the way of
25 capital improvement accounts, other than the purchase of

1 the property?

2 THE WITNESS: The capital improvement account
3 was a credit balance account. It was not a separate
4 financial statement -- separate financial fund, in terms
5 of a discrete deposit structure in a local bank. There
6 was an exception to that in that Club Purchase Funds were
7 being definitely set aside. Beyond that, it is my opinion
8 that the board of directors annually, in establishing the
9 budget, selected certain items of capital improvement to
10 the club which would be accomplished during the year. To
11 this end, we -- excuse me.

12 THE COURT: Now, that shows up in the budget?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right.

15 MR. DAVIDSON: Your Honor, is this testimony
16 questions from the Court, or was this all subject --

17 THE COURT: I see nothing wrong with that,
18 counsel, regardless of who it came from.

19 MR. DAVIDSON: Yes, Your Honor, but his -- well --

20 THE COURT: The witness is explaining the basis
21 upon which certain items, if the witness's recollection is
22 correct, were set out in the budget as capital improve-
23 ments and other items which were set out as maintenance,
24 or the replacement of a worn-out something-or-other, or
25 repainting or refurbishing.

1 MR. DAVIDSON: No, Your Honor, the witness --

2 THE COURT: And according to the testimony of
3 the witness, the board in fact distinguished between the
4 two.

5 MR. DAVIDSON: The witness testified as to how
6 he would distinguish between the two, Your Honor.

7 THE COURT: No, it is my understanding that he
8 is testifying as to what the budget will show. Now, if
9 the budget doesn't show that, I don't know that the
10 testimony is of any useful value.

11 BY MR. FESJIAN: (Resuming)

12 Q Is your definition as you just gave it to the
13 Judge of a capital improvement also your personal opinion
14 of what a capital improvement is?

15 A Yes, sir.

16 MR. DAVIDSON: Objection, Your Honor. The prior --

17 THE COURT: That is sustained.

18 MR. DAVIDSON: The witness's opinion.

19 THE COURT: Let me say this to counsel for the
20 Petitioner. If the figures and the books and records do
21 not support this type of allocations, the Court has no
22 intentions of letting a witness come up here ten years
23 later or five years later and testifying to them.

24 MR. FESJIAN: We agree that --

25 THE COURT: Now, I will sit here until Doomsday,

1 and I'm not going to cut you off. You put in all you want.
2 But that's just not sufficient in the Court's opinion, and
3 I just want to be frank with you right now.

4 MR. FESJIAN: I understand that, Your Honor, and
5 if I may --

6 THE COURT: But if, as the witness says, the
7 budget as submitted and approved by the directors shows
8 certain items that are capital improvements and certain
9 other items that are replacement or whatever you want to
10 call it, then the adoption of that budget by the board,
11 in the opinion of the Court, is adequate approval of a
12 capital improvement expenditure policy. But if that doesn't
13 take place, I don't think that deficiency can be supplied
14 by a director saying what his personal opinion was,
15 because that's why you have budgets and that's why you
16 have minutes.

17 BY MR. FESJIAN: (Resuming)

18 Q Thank you, Your Honor.

19 Did the club have a capital improvements program?

20 A Oh, yes, the club capital improvements program
21 started before I was on the board. I believe it was in
22 sixty-one or two or something like that I got a letter on
23 it that I recall from Don Hay. While I was on the board,
24 we did many things. We went through -- Well, as I
25 indicated in my earlier testimony, the letter of

1 request for extension of lease to the General Electric
2 Company was precipitated by the fact that our lease was
3 on a five-year basis and had a relatively short period to
4 run, and we were anticipating at that time a capital
5 improvements program on the order of \$100,000. We were
6 building -- We were talking about new pro shops, new locker
7 rooms, new snack bars, new storage areas, new club storage
8 areas. It was a considerable amount of money, and we as
9 a board did not feel that we should proceed with this
10 without some assurance that we had continuation of our lease
11 assured.

12 Q Who was in charge of the capital improvements
13 program?

14 A The capital improvements program basically was
15 the subject of the board's decision. Individual members
16 of the board sponsored various items within the capital
17 improvements program, whether -- when it fell into their
18 areas of responsibility, whether it was grounds and
19 buildings, or golf course, or pool, or house facilities,
20 or locker facilities, or pro shop, or whatever item it
21 might be, but the responsibility for making decisions
22 relative to going ahead with the project lay with the
23 board as an entirety.

24 Q What would be the procedure for the board to
25 approve a particular capital improvement? Can you describe

1 that procedure, please?

2 A The general procedure was that initially, as
3 I described earlier, the budget was prepared by individual
4 sponsors. When we came down to individual items to be
5 procured, individual amounts to be spent for contracts or
6 for purchases, specific board action was made, and notes
7 were made in the minutes of meetings authorizing the
8 expenditure of x dollars for Item Y, or whatever it might be.

9 Q How long did this procedure take?

10 A I don't understand what you mean by procedure now.

11 Q The procedure from the time a member sponsored
12 a particular item to the time the club actually paid out
13 for that item.

14 A It is various lengths of time, because of
15 circumstances. In the case of a major addition to the
16 golf club, which I spoke of earlier, the \$100,000 job,
17 that actual accomplishment took place well over a
18 period of a year. It required approval of specific
19 amounts for architect's fees first, then to get estimates
20 for the job, and finally for the job to be done, and it
21 probably was a year-and-a-half or maybe even two years in
22 accomplishing that particular item.

23 Or the other hand, smaller items have been
24 handled in a much more rapid fashion, as is obvious.

25 Q Can you recall any specific improvements during

1 the years 1966 through 1968, the calendar years?

2 MR. DAVIDSON: Your Honor --

3 THE WITNESS: I can't do that specifically off
4 my head. I'll have to let the record stand on that. I
5 don't know it that well.

6 MR. DAVIDSON: Okay.

7 BY MR. FESJIAN: (Resuming)

8 Q Did everyday members as opposed to members of
9 the board become involved in a capital improvements program?

10 A Very frequently. As a member of the board, you
11 are always subject to discussion on any item of club
12 activity by any member at any time except on your backswing.
13 That was prohibited, but you couldn't go to the club, you
14 couldn't play golf without somebody generally wanting to
15 discuss some item of activity or lack of activity, and
16 amongst this, of course, were the capital improvement pro-
17 grams. There were people who were opposed to spending a
18 dollar for anything, and there were other people who
19 wanted everything done today because they could afford it.
20 So it's a matter of frequent discussion on a personal
21 basis with many members of the club on a continuing basis,
22 as long as you're on the board and for at least a year
23 thereafter they still think you're on the board and they
24 bring up the same subjects.

25 Q How was the capital improvements program financed?

1 A The capital improvements program was financed
2 by the assessed funds on a credit balance basis. We would
3 borrow money when we had to, if we didn't have enough in
4 the credit balance account, or we'd draw money out as we
5 required it.

6 Q By the credit balance account -- would you
7 explain that more fully?

8 A Yes. We essentially kept a record of how much
9 money we had accumulated for capital improvements, and we
10 withdrew from that accounting, if you will, on just a con-
11 tinuing accounting basis, sort of a running inventory of
12 dollars, if you will, and spent money. Now, we also made
13 some capital improvements, I am certain, from moneys other
14 than the assessment funds. In those years when we did
15 show a "net profit" from the club's operation, the
16 restaurant operation and that kind of thing, we did spend
17 moneys from those things for capital improvements which
18 were not funded out of the assessment fund.

19 THE COURT: I am a little bit confused there,
20 counsel. I thought, from the way Mrs. Thackeray put it,
21 that x dollars which originally I thought was the entire
22 amount of the assessment, but then it turns out it wasn't,
23 it was twenty percent of the dues, went over into this
24 property purchase fund, but I heard no testimony that
25 there was any other capital improvements account.

1 MR. FESJIAN: Well, Your Honor, I believe it
2 will be part of our case to show that the sum of the
3 club purchase, the amounts necessary for the club purchase
4 and the amounts necessary for capital improvements in both
5 years exceeded the amounts taken in as assessments. That
6 will be one segment of our case. We are still hopeful
7 of showing earmarking, specific earmarking as is shown.

8 THE COURT: I don't mean earmarkings, but this
9 witness testified as to a capital improvement account, but
10 it is the Court's understanding that there is no such
11 account on the books of the company. Now, is that right
12 or wrong?

13 MR. FESJIAN: Do you know the answer to that,
14 Mr. Kleczek?

15 THE COURT: I don't know whether he knows. I
16 thought maybe counsel might know.

17 MR. FESJIAN: Well, there is an account called
18 a 501 account, which is labeled in ink, Assessments, and
19 crossed out in pencil and called, Capital Improvements,
20 and Mrs. Thackeray, I believe, testified that the reason
21 for that was just a more appropriate title.

22 THE COURT: Well, is that the twenty percent or
23 is that the full amount of the assessment that went into
24 that? I had understood again that that was the account
25 that ultimately got totaled up and went over into the

1 savings account.

2 MR. FESJIAN: I believe that is directly related,
3 to assessments as they would appear on the dues structure.

4 MR. DAVIDSON: Of course, Your Honor, the 501
5 account was not a fund at all, as the witness has
6 accurately pointed out.

7 THE COURT: I know. I don't know that you need
8 a fund, counsel. In other words, you are going to over-
9 spend some months and underspend another. Proceed.

10 BY MR. FESJIAN: (Resuming)

11 Q I show you the dues structure for -- effective
12 April 1, 1967. As you can see, there is no breakdown
13 between dues and assessments. The \$27 is just called dues.

14 A Um-hm.

15 Q Does that mean that the board just decided to
16 charge for dues and not assessments that year?

17 MR. DAVIDSON: Objection, Your Honor.

18 THE COURT: Sustained.

19 MR. FESJIAN: May I understand the basis for
20 that objection and --

21 MR. DAVIDSON: Well, it is contrary to the --
22 Counsel is asking the witness a question which is contrary --
23 in the answer, if it contradicts the express part of the
24 stipulation, would be contrary to the stipulation, and
25 additionally, he is asking him a personal opinion, which is
not relevant to the issues in this case.

1 THE COURT: Well, I think the minutes of the
2 board is what you've got to show that.

3 MR. DAVIDSON: That is Respondent's contention.

4 MR. FESJIAN: If that is the objection, Your
5 Honor, I don't believe it is appropriate, because all I
6 asked was, when you received this dues structure, was it
7 your understanding that there were no amounts --

8 THE COURT: Well, on that I would have to
9 sustain the objection, because it is immaterial what this
10 witness's understanding was.

11 MR. FESJIAN: Well, I believe it is material,
12 Your Honor, and I would like to make an offer of proof
13 that --

14 THE COURT: Well, then you take an exception.
15 We will assume that he understood it was still on the old
16 basis.

17 MR. FESJIAN: Is that in the record, Your Honor?

18 THE COURT: We will assume that for your proffer.

19 MR. FESJIAN: That would be the offer of proof.

20 THE COURT: Right.

21 BY MR. FESJIAN: (Resuming)

22 Q Yes. Thank you.

23 I show you a letter, Exhibit 36-JJ, and I point
24 to the first paragraph on Page 2. Please read the first
25 sentence.

1 A "You will note that the attached dues schedule
2 is identical with the one which had been scheduled to go
3 into effect April of 1966 with two exceptions."

4 Q Thank you. Do you recall reading this letter?

5 A Yes, sir, I do.

6 Q At the time it was sent to you originally?

7 A Yes, sir.

8 Q When you read that first sentence, did you believe
9 that the \$27 listed on Exhibit 4-D was all dues, or both
10 dues and assessments?

11 MR. DAVIDSON: Objection, Your Honor.

12 THE COURT: Sustained.

13 MR. FESJIAN: My offer of proof, Your Honor, will
14 it -- May I make one?

15 THE COURT: You may.

16 BY MR. FESJIAN: (Resuming)

17 Q Please answer the question.

18 MR. DAVIDSON: Your Honor, this again is --

19 THE COURT: This is his offer of proof.

20 MR. FESJIAN: This is the offer of proof.

21 MR. DAVIDSON: Okay.

22 THE WITNESS: My interpretation of that sentence
23 is that things had not changed from prior years. We were
24 operating on the same basis we had in prior years.

25 MR. FESJIAN: In other words, and this would

1 still be the --

2 THE COURT: Now, you have made your offer.
3 Now, let's get back onto the nonobjectionable, will you,
4 counsel?

5 BY MR. FESJIAN: (Resuming)

6 Q Okay. How did you actually make payments to the
7 club for dues and assessments?

8 A I as a member of General Electric at that point
9 in time had a deduction authorization with the General
10 Electric Company, and they automatically deducted from my
11 income the gross amount due the club. It was sent --
12 They were communicated with on what the forms of member-
13 ship were. They had an application from me that said I
14 was a regular member. Whatever the total regular monthly
15 charges were, they subtracted that from my pay, sent it to
16 the Edison Club, and there was a notation on my pay stub
17 at that time which said, Edison Club, blank dollars and
18 cents.

19 Q Would that notation on your check say anything
20 besides, Edison Club?

21 A No, sir, just, Edison Club.

22 Q Were payroll deductions made for items other
23 than dues and assessments?

24 A Oh, yes.

25 Q For the Edison Club, I mean.

1 A No, not for the Edison Club. All other charges
2 at the Edison Club, I was billed for separately. Any
3 guest fees I may have, any purchases at the pro shop, or
4 at the restaurant, or at the bar, were billed separately,
5 or in swimming lessons for my daughter, or something like
6 that.

7 Q You stated that you were treasurer of the club
8 earlier.

9 A That's correct.

10 Q What years were you treasurer?

11 A I believe it was sixty-seven, part of sixty-eight,
12 and sixty-nine.

13 Q What were the duties of the treasurer?

14 A The duties of the treasurer principally were
15 to initially establish the budget for the coming year, as
16 I described earlier, and then maintain a current awareness
17 of what the expenditure levels were within the club,
18 review the monthly statement prior to the board meeting,
19 look for any variations from the theme, if you will, and
20 be prepared to explain those to the rest of the board, and
21 also make any advice as necessary relative to maintenance
22 of the budget as originally laid out, and as we may have
23 an emergency in one area that's going to preclude us from
24 doing something in another area, or something of that sort.

25 Q Were you involved with the day-to-day maintenance

1 of the books of record?

2 A No, I was not involved with the day to day
3 maintenance of the books of record. I did have to on a
4 weekly basis, usually at Thursday noontime, sometimes in
5 the evening if I couldn't make it at noon -- I would go out
6 and cosign with the club manager all of the checks due for
7 that week, and this would be both payroll and all of the
8 expenditures for all of the expenses of the club or any
9 other billing which the club received. At that point in
10 time, I would -- with the exception of payroll, I would
11 have a voucher indicating that the item was there, I would
12 have a bill from the person who supplied the goods or
13 services, and if it was anything I didn't understand, then
14 I would ask the club manager to explain it to me prior to
15 signing the check and making it authorized.

16 Q What category of membership did you hold in the
17 calendar years 1966 through sixty-eight?

18 A I'd have been a regular member in both years.
19 This means basically that I have full house privileges,
20 at that time, tennis court privileges and golfing privi-
21 leges.

22 Q Is that the top membership?

23 A That is the upper category of membership. The
24 additional membership is pool membership, which is op-
25 tional, but I happen to hold that as well for my children

1 and myself.

2 Q During the years in question, what has been
3 your relation to other members of the club?

4 A Very good. I would say I'm on a first-name
5 basis -- I probably know the first names of two to 300
6 of them, and I think every one of them knows my first name.

7 Q Did you ever discuss the dues structures with
8 other members?

9 A Many times.

10 MR. DAVIDSON: Objection, Your Honor. That is
11 not relevant.

12 THE COURT: Well, wait until he asks the next
13 question.

14 BY MR. FESJIAN: (Resuming)

15 Q Do you remember any particular conversations
16 pertaining to the dues structure with members?

17 MR. DAVIDSON: Objection again, Your Honor.

18 MR. FESJIAN: This just calls for a yes or no
19 answer, Your Honor.

20 THE WITNESS: Yes. I'm sorry. I shouldn't have
21 said that.

22 MR. DAVIDSON: Your Honor, I object to the
23 question and ask that the answer be stricken.

24 THE COURT: Objection overruled.

25 MR. DAVIDSON: The matter is irrelevant.

1 BY MR. FESJIAN: (Resuming)

2 Q Could you recount the gist of any particular
3 conversation?

4 MR. DAVIDSON: Objection, Your Honor. That is
5 hearsay.

6 THE COURT: Objection sustained.

7 MR. FESJIAN: I would like to make my offer of
8 proof, Your Honor.

9 THE COURT: I think we have had enough of that,
10 counsel. If you don't realize that that is inadmissible,
11 why --

12 MR. FESJIAN: Well, I believe it would help to
13 show --

14 THE COURT: Let's just say you're going to say
15 that he talked to somebody on the first tee, and he
16 explained to them that part was assessment and part was
17 dues. Is that what you're going to --

18 MR. FESJIAN: Fine. That's very good.

19 THE COURT: All right.

20 BY MR. FESJIAN: (Resuming)

21 Q When you became a member in 1959, did you feel
22 that the club would last forever?

23 MR. DAVIDSON: Objection, Your Honor.

24 THE COURT: Objection sustained.

25 BY MR. FESJIAN: (Resuming)

1 Q What was your belief, if the club had been
2 subject to a condemnation proceeding or had been dissolved
3 for some other reason, where would the assets have gone?

4 MR. DAVIDSON: Objection, Your Honor.

5 THE COURT: Objection sustained.

6 MR. FESJIAN: I would like to make an offer of
7 proof.

8 THE COURT: Counsel, the certificate of incor-
9 poration covers that. This witness isn't competent to
10 testify as to that, and what he believes is wholly
11 irrelevant and immaterial. Now, we are getting along
12 here to --

13 MR. FESJIAN: Your Honor, I am close to the end,
14 but on that --

15 THE COURT: The hour is late, and if counsel
16 doesn't understand the irrelevancy of that, go ahead,
17 make your proffer, but I mean the Court is becoming
18 impatient with that type of testimony, because if you
19 don't know where the line stops, I am afraid you didn't
20 learn very much when you were down with us, but go ahead.

21 BY MR. FESJIAN: (Resuming)

22 Q Would you answer the question, please?

23 A I'm sorry --

24 Q Where did you believe the assets would go on
25 dissolution or condemnation?

1 MR. DAVIDSON: Is this an offer of proof,
2 Your Honor?

3 MR. FESJIAN: Yes.

4 THE COURT: This is an offer of proof.

5 THE WITNESS: The assets, I believed, those
6 things that were owned by the membership would be dis-
7 tributed to the regular members, and this is based on the
8 fact that the constitution at that time stated that the
9 ownership of the club was deemed to be vested in the
10 regular members. I think that's a reasonably accurate
11 statement.

12 MR. FESJIAN: Thank you. No more questions,
13 Your Honor.

14 THE COURT: You may cross examine, counsel.

15 CROSS EXAMINATION

16 BY MR. DAVIDSON:

17 Q Were G. E. members mailed copies of the dues
18 structures that we stipulated to, Exhibits 3-C and 4-D?

19 A All members -- all -- both regular and
20 associate members were mailed copies of those dues
21 structures.

22 Q All right. In the time when you were -- Well,
23 during these years in issue, and during the time that you
24 were a member of this club, did any members sell their
25 interest in the club?

1 A No, sir.

2 Q Now, it is true, isn't it, that there were
3 different types of memberships in this club, regular,
4 associate, you had talked about the pool memberships --

5 A That's correct.

6 Q It is true, isn't it, that associate members
7 were not allowed to vote for directors or to hold office
8 in the club?

9 A That's correct.

10 THE COURT: Again, counsel, you are doing the
11 same thing that you objected to here. You are asking this
12 witness questions about matters that are provided for in
13 the articles of incorporation, and a minute ago you were
14 objecting to the Petitioner's asking those same questions.

15 MR. DAVIDSON: No further questions, Your Honor.

16 THE COURT: The witness may be excused.

17 (Witness excused.)

18 MR. FESJIAN: The Petitioner has no further
19 witnesses, Your Honor.

20 THE COURT: All right. Does the Respondent have
21 any witnesses?

22 MR. DAVIDSON: No, Your Honor.

23 THE COURT: We will have some brief dates, here.

24 MR. DAVIDSON: Your Honor --

25 MR. FESJIAN: One item, Your Honor. We forgot

1 earlier in the trial to mention that we have a supplemental
2 stipulation which is going to be prepared in the next day
3 or two, and it will be entered, hopefully, if you leave
4 the record open.

5 THE COURT: Well, suppose we keep the record
6 open ten days to receive the supplemental --

7 MR. FESJIAN: Thank you.

8 THE COURT: And the Court would recommend to both
9 parties that in the supplemental stipulation we eliminate
10 the chaff and get down to the basic issue. The fact that
11 the memberships were nontransferable, in the opinion of the
12 Court, and I think that there is plenty to support that
13 opinion, is wholly irrelevant and immaterial to the
14 decision of this issue. As this witness pointed out in
15 response to the question by the Respondent, the articles
16 of incorporation provide, as do most clubs, that in the
17 event of a dissolution, the assets have to be distributed
18 among the then regular members, and that has been -- I
19 don't think that that varies in any -- club to club.
20 There are very few clubs that have transferable shares
21 of stock.

22 MR. DAVIDSON: Your Honor, I don't believe either
23 the constitution or the by-laws of this club so provided.

24 THE COURT: I think it does, and I think that
25 follows as a matter of law, frankly.

1 MR. DAVIDSON: Well, Your Honor, I think under
2 the membership law under which this corporation was
3 organized, a court of equity decides how the assets will
4 be distributed on dissolution.

5 THE COURT: Well, that's the only way you can --
6 Who can you distribute the assets to except the members,
7 counsel?

8 MR. DAVIDSON: Your Honor, they could be
9 distributed to the state.

10 THE COURT: What? All right.

11 MR. FESJIAN: If Your Honor please, that doesn't
12 appear equitable.

13 THE COURT: I am surprised this doesn't. I
14 thought I saw it in there, because this is a pretty
15 standard constitution.

16 MR. DAVIDSON: Well, this is a special New York
17 membership corporation, Your Honor.

18 THE COURT: I see.

19 MR. FESJIAN: I believe it is Article Nine,
20 Your Honor.

21 THE COURT: Article Nine.

22 MR. FESJIAN: On Page 17.

23 THE COURT: Ownership of the club is being
24 divested in the regular members. Now, that means that
25 in the event of a -- if the club ceases to exist, the

1 regular members get their pro rata share of whatever
2 assets the club owns.

3 MR. DAVIDSON: Well, I'm not sure that that
4 is what it means under New York law, Your Honor.

5 THE COURT: Well, I mean that's what the charter
6 says, right?

7 MR. DAVIDSON: It says that -- ownership vested
8 in the members, Your Honor. It doesn't say anything about
9 how assets can be distributed.

10 THE COURT: Well, counsel, what is the
11 difference in the event of a dissolution between that and
12 having a share of stock?

13 MR. DAVIDSON: Well, Your Honor --

14 THE COURT: If you want to go -- I am just
15 trying to save you gentlemen some time. If you want to
16 go ahead and brief this, you may go ahead and brief it,
17 but as far as the Court is concerned, unless you know
18 something that I haven't learned in thirty-eight years
19 you are wasting your time.

20 MR. GORDON: Your Honor, I appreciate --

21 THE COURT: This is a common provision of all
22 clubs, and I have never heard it argued before that that
23 makes it any less a corporation owned by the members, even
24 though they don't have a transferable interest. In fact,
25 there are corporate stocks that aren't transferable, that

1 you have to offer them back to the corporation. That's
2 not even unique to membership clubs. It would seem that
3 if the parties -- and I am afraid, with that cartful
4 of material, it is going to be probably a rather voluminous
5 job, it just seems to me, as to what are the requirements
6 as between a payment for services and a contribution to
7 capital, in the form of an assessment, and I don't know
8 that that has ever come up, unless it came up under some
9 of the tax on dues cases. I haven't seen much on it. I
10 don't think it has ever come up in the income tax area
11 that I know of.

12 MR. GORDON: The United Grocers was one case,
13 Your Honor.

14 THE COURT: That's not the same case at all.

15 MR. GORDON: Well, I say -- I say, that issue
16 did --

17 THE COURT: And there are other cases that
18 came up that went the other way.

19 MR. GORDON: That's correct, Your Honor. I
20 don't mean to imply that --

21 THE COURT: And that -- I think -- that isn't
22 the club area, like we are talking. But this is somewhat
23 of a novel area, there, so in the interests --

24 MR. GORDON: I think that is all the Respondent
25 was getting at, Your Honor.

1 THE COURT: Yes. In the interest of trying
2 to devote yourself to what is important, and I was
3 hoping that maybe in this supplemental stipulation we
4 can somewhat narrow the area of difference here.

5 MR. GORDON: We will endeavor to do so.

6 THE COURT: Thank you. And I think maybe we
7 had better start out with sixty days this time, since
8 we've got an awful lot of --

9 MR. GORDON: Your Honor, in view of the fact
10 that you are keeping the record open an additional ten
11 days, I think it would give the Respondent the opportunity
12 to Xerox the necessary documents within that period, and
13 then we could -- if procedurally it is okay, we could
14 ship the documents down to the Court.

15 THE COURT: No, I think we'd better take them
16 down, and then have you withdraw them then --

17 MR. GORDON: Okay.

18 THE COURT: Unless you want to list them in
19 receipt form here. I have trouble when it comes up to a
20 record on appeal. That is what concerns me.

21 MR. GORDON: Well, I gather we can have
22 representatives --

23 THE COURT: Now, if you want to withdraw the
24 original and substitute copies -- but the trouble is,
25 you gentlemen haven't gone over this, and nobody is

1 prepared to say what is material and what isn't.

2 MR. GORDON: Right. We can have representatives
3 of the national office Xerox the necessary documents for us.

4 THE COURT: All right. We will have to pack them
5 up and send them down.

6 MR. GORDON: Okay, Your Honor.

7 THE COURT: So, let's take seventy days from
8 today for the main briefs, Mr. Clerk. What is the date
9 for that?

10 THE CLERK: August 22nd.

11 THE COURT: And the reply?

12 THE COURT: Thirty days thereafter is
13 September 23rd.

14 THE COURT: September 23rd. I usually promise
15 ninety-day decisions, but I might be sitting on this one
16 for the next ten years. That's what worries me.

17 Thank you, gentlemen.

18 MR. FESJIAN: Thank you, Your Honor.

19 MR. DAVIDSON: Thank you.

20 MR. GORDON: Thank you.

21 (Whereupon, at four-ten o'clock p.m., the case
22 was concluded as described above, and the Court was
23 recessed until ten o'clock a.m. of the following day.)
24
25

UNITED STATES TAX COURT

THE EDISON CLUB,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7828-71
)	
COMMISSION OF INTERNAL REVENUE,)	
)	
Respondent.)	
)	

SUPPLEMENTAL STIPULATION OF FACTS

In supplement to a Stipulation of Facts filed in Court on June 13, 1974, the parties hereby stipulate and agree that for the purpose of this case the following facts may be taken as true:

18. The Edison Club paid the following amounts for capital improvements to the following payees on the dates and for the items indicated during the taxable years ended 1967 and 1968:

<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Item</u>
<u>Taxable Year Ended 1967</u>			
37720	Weiss Electric	\$650	Wiring
37768	Jack Gormley	\$1339.75	Greensaire
37775	The Magovern Co., Inc.	\$1320	Truckster
37776	Grassland Equip. & Irrigation Corp.	\$1459.45	Mower
37832	Blue Spruce Nursery	\$329.46	Trees
37872	Weiss Electric	\$648	Electrical Work
37879	Culver Office Equip. Co., Inc.	\$721.14	Chairs
38210	State of New York Department of Public Works	\$80	Building Permit
38248	Walter J. Socha, Builders	\$335	Tile
38301	Culver Office Equip. Co., Inc.	\$3400	Furniture
38857	Lewis Equipment Co.	\$2606.30	Range
39053	Carl Liss	\$507.96	Television

<u>Check No.</u>	<u>Payee</u>	<u>Amount</u>	<u>Item</u>
<u>Taxable Year Ended 1968</u>			
40127	Weiss Electric	\$600	Electrical Work
40290	Weiss Electric	\$1500	Electrical Work
40425	Weiss Electric	\$1432.48	Electrical Work
40647	L.T. Brockbank, Inc.	\$1562.49	A/C Compressor
40704	E.B. Salisbury & Sons	\$504.90	Winter Conditioner
41159	Mohawk Chevrolet Co.	\$2194.02	1/2 Ton Pickup
41173	Black Studios, Inc.	\$438.83	Projector
41261	Latham Motors, Inc.	\$4693.02	Truck

19. The Edison Club redeemed swimming pool bonds during the taxable years ended 1967 and 1968 as follows:

<u>Check No.</u>	<u>Bond No.</u>	<u>Payee</u>	<u>Amount Redeemed</u>
<u>Taxable Year Ended 1967</u>			
37597	455	Edward R. Sangster	\$200
37647	339	Robert J. Hoe	143.35

<u>Check No.</u>	<u>Bond No.</u>	<u>Payee</u>	<u>Amount Redeemed</u>
37727	387	Sam R. Burnett	\$200
38338	79	Robert M. Mains	172.58
38545- 38566	Various	Various	3700
38573- 38588	Various	Various	2800
38606- 38614	Various	Various	1700
38615- 38617	Various	Various	600
38717	16	Ronald P. Carreker, Jr.	200
38759- 38763	Various	Various	586.25
38784- 38797	Various	Various	3100
38898- 38918	Various	Various	3900
39401	441	Randall R. Rockwood	200

Taxable Year Ended 1968

39834	373	Randall P. MacDonald	\$300
39835	600	L.F. Kendall	200
39839	71	William J. Kerley, Jr.	200

<u>Check No.</u>	<u>Bond No.</u>	<u>Payee</u>	<u>Amount Redeemed</u>
<u>Taxable Year Ended 1968</u>			
39850- 39852	Various	Various	\$500
39977	308	Fredrick J. Martin	\$200
40087	477	Sigmund J. Lawrence	\$196.80
40713- 40726	Various	Various	\$2900
40773	353	Arthur P. MacDonald, Jr.	\$200
40775	405	Robert Sullivan	\$200
40858- 40861	Various	Various	\$1400
40962	459	Richard M. Johnson	\$200

ROBERT A. FESJIAN
Counsel for Petitioner
815 Connecticut Avenue, N.W.
Washington, D.C. 20006

MEADE WHITAKER,
Chief Counsel,
Internal Revenue Service.

By: _____
THEODORE E. DAVIS,
Assistant Regional Counsel.

T. C. Memo. 1975-19

UNITED STATES TAX COURT

THE EDISON CLUB, Petitioner v. COMMISSIONER OF INTERNAL
REVENUE, Respondent

Docket No. 7828-71.

Filed February 6, 1975.

Robert A. Fesjian, J. P. Janetatos, and David W.
Welles, for the petitioner.

Jeffrey L. Davidson and Barry D. Gordon, for the
respondent.

MEMORANDUM FINDINGS OF FACT AND OPINION

QUEALY, Judge: Respondent determined deficiencies
and a penalty in the petitioner's Federal income tax as
follows:

<u>Fiscal Year Ended</u>	<u>Deficiency</u>	<u>Addition to Tax</u>
March 31, 1967	\$ 4,630.48	\$463.05
March 31, 1968	18,537.72	

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The issues presented for our decision are:

(1) Whether any amounts received by the Edison Club from its members during the fiscal years ended March 31, 1967 and 1968, were contributions to capital and hence excludable from gross income under section 118;¹

(2) Whether the petitioner is liable for a penalty for failure to file a return when due for the fiscal year ended March 31, 1967, pursuant to section 6651.

FINDINGS OF FACT

Some of the facts have been stipulated by the parties. Such facts and the exhibits attached thereto are incorporated herein by this reference.

The Edison Club (hereinafter sometimes referred to as "petitioner") is a New York corporation originally organized under the Membership Corporation Law of

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All statutory references are to the Internal Revenue Code of 1954, as amended, unless otherwise indicated.

New York.² Its principal office both now and at the time of filing the petition in this case was at Rexford, New York. Petitioner keeps its books and records on the accrual method of accounting and files its returns on a fiscal year ending March 31. For the fiscal years ended March 31, 1967 and March 31, 1968, petitioner filed its income tax returns with the district director of internal revenue at Albany, New York, on October 30, 1967, and on August 28, 1968, respectively.

Petitioner owns and operates its facilities as a social and recreational club primarily for the benefit of its members. However, it also derives substantial income from the use of its facilities by non-members. The Club was originally begun for employees of the General Electric Co., but it is now open to others as well. From 1928 until 1968, the petitioner leased the land upon which its facilities are located, first from

2

The Membership Corporation Law was repealed effective September 1, 1970.

[- 4 -]

the General Electric Co., and later from the General Electric Co.'s subsidiary, General Electric Realty Corp.

At all times material herein, petitioner's members consisted of regular members, associate members, house members, women members, junior members #1, #2, and #3, and pool members. The right to vote and to hold office was restricted to the regular members. Only the employees of General Electric Co. were admitted as regular members. Pursuant to its constitution, ownership of the Club was vested in the regular members.

Section 4241, repealed by Pub. L. 89-44 effective January 1, 1966, imposed a tax of 20 percent of the amounts paid as dues or membership fees to a social, athletic, or sporting club, if the total dues or fees paid exceeded \$10 per year. Section 4243(b) repealed by Pub. L. 89-44 effective January 1, 1966, exempted from said tax "any amount paid as dues or membership fees or as initiation fees" for certain specific purposes such as construction, reconstruction,

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[- 5 -]

capital additions, including furnishings and fixtures relative thereto. As amended by Pub. L. 86-344, section 4243(b) provided as follows:

(b) Payments for capital improvements.
Notwithstanding any other provision of this part, there shall be exempted from the provisions of section 4241 any amount paid as dues or membership fees or as initiation fees--

(1) for the construction or reconstruction of any social, athletic, or sporting facility, or

(2) for the construction or reconstruction of any capital addition to, or capital improvement of, any such facility, or

(3) for furnishings or fixtures (including installation charges) for any such facility, to the extent that such furnishings or fixtures are required, by reason of the construction or reconstruction described in paragraph (1) or (2), for the use of such facility upon completion of such construction or reconstruction;

except that, in the case of any such amount which is not expended for such construction, reconstruction, furnishings or fixtures (including installation charges) within 3 years after the date of payment of such amount, the exemption provided by this subsection shall cease to apply upon the expiration of such 3-year period, and the club or organization,

[- 6 -]

rather than the person who made such payment, shall be liable for any tax imposed by section 4241 in respect of such payment; as if such payment had been made on the first day following the expiration of such 3-year period.

The purpose for such exemption was explained in the report of the Committee on Ways and Means as follows:³

In the case of the 20 percent club dues tax, the Excise Tax Technical Changes Act of 1958 provided an exemption for assessments for capital improvements. It was indicated that this exemption was granted because the construction or reconstruction of capital facilities represents especially heavy burdens for many clubs and that it was unfortunate to add to this already heavy burden by the imposition of a tax.

Experience under this exemption has suggested the desirability of several refinements. First, reference to exemptions only for "assessments" for capital improvements has limited the application of the exemption to dues since the term "dues" is defined as including any assessment. This precludes an exemption for initiation fees even though the amounts collected are used for the construction or reconstruction of otherwise qualifying capital improvements.

Second, the exemption is not available in the case of assessments for required furnishings and fixtures since such amounts are not for the "facility" being constructed or reconstructed.

³

H. Rept. No. 992, 86th Cong., 1st Sess., pp. 6-7 (1959).

[- 7 -]

Third, there is no indication in the present exemption as to how long after the payment of the assessment the construction or reconstruction may occur, or how specific the plans must be for this construction or reconstruction.

In view of these problems section 3 of this bill rewrites this exemption to provide for the problems referred to above. First, it provides an exemption for amounts paid for dues or membership fees or as initiation fees (instead of referring only to assessments which relate only to dues).

Second, it provides an exemption not only in the case of the construction or reconstruction of a social, athletic, or sporting facility or for a capital addition or improvement in such a facility, but also for certain furnishings or fixtures (including installation charges) for such a facility. To qualify the furnishings or fixtures must be required by reason of the construction or reconstruction for the use of the facility upon the completion of the work. For example, this would include required furniture, drapes, carpeting, refrigerators, etc., for a new facility, or for any portion of an existing facility which is reconstructed.

Third, the exemption is limited to amounts spent for construction or reconstruction or required furnishings or fixtures within 3 years after the date of payment by the club member. The tax on amounts not so spent becomes payable immediately after the expiration of the 3-year period and in this case is payable by the club rather than the member. The shift in the incidence of the tax in this case is provided because of the problem which would otherwise be presented in attempting to trace back to members of the club 3 years earlier.

[- 8 -]

These changes are made effective for amounts paid on or after the first day of the first month beginning more than 10 days after the date of enactment of this bill. In addition, the amounts paid must be for construction or reconstruction of a facility begun on or after January 1, 1959, or for furnishing or fixtures for such a facility upon its completion.

Prior to the repeal of the excise tax on dues effective January 1, 1966, the dues structure of the Club had included from time to time an additional charge designated as an "assessment," the purpose of which was to provide funds for capital improvements and other expenditures on account of which the exemption was provided in section 4243(b).

In the letter to the board of directors, dated May 8, 1964, entitled "Capital Financing Report," J. T. Burns, President of the petitioner, outlined requirements totaling \$32,340 of which \$17,340 represented repairs and replacements and \$15,000 represented an insurance premium. To meet these

expenditures, Mr. Burns reported, as follows:

Initiation fees - 80 at \$150 each. \$12,000.00
This 80 looks like a good figure
because the first month of the year
we had 11. Remember, while we work
on a fiscal year we can talk in terms
of generation of funds for any suc-
ceeding 12 month's period.

The assessment generation would appear
as follows:

Regular	493	x	\$24	11,832.00
Associate	270	x	24	6,480.00
House	277	x	9	2,493.00
Women & Seniors	50	x	12	600.00
				<u>\$21,405.00</u>
				\$33,405.00

Now looking at the yearly generation
you will see that we are pretty close
to the total of additional needs of \$32,340.00

At a meeting of the board of directors held on
February 18, 1965, there was adopted the dues structure

[- 10 -]

to be effective April 1, 1965. This action is set forth in the minutes of said meeting as follows:⁴

Dues Structure - Effective April 1, 1965.

It was duly moved and approved that the following dues structure changes shall be placed in effect starting April 1, 1965.

Type of Membership	Present Total *Monthly Charge	Change in Monthly Charge 4/1/65	Total *Monthly Change effective April 1, 1965
Regular	20.00	+ 3.00	23.00
Associate	24.00	+ 2.00	26.00
House	8.25	--	8.25
Women	10.75	--	10.75
Senior	10.75	--	10.75
Honorary	--	--	--
Women-Affiliate	10.75	--	10.75
Junior #1	2.50	--	2.50
Junior #2	1.50	--	1.50
Junior #3	1.00	--	1.00
Swimming Pool	4.00	--	4.00

*Dues and fees are actually on an Annual basis due in full 30 days after April 1st or at the time of election for new members, but are shown on a monthly basis above for convenience.

⁴

In the excerpts from the minutes set forth herein the numbering of the items has been omitted and typographical errors have been corrected.

At said meeting of February 18, 1965, there was also considered a proposal for a proposed increase in the dues structure to become effective April 1, 1966. This action is set forth in the minutes of said meeting as follows:

Anticipated change in total charges, effective April 1, 1966.

It was duly moved and approved that the membership be advised by letter from the President of the above changes in dues structure (Item A, 3) and further, that the Board currently anticipates that the agreement between The Edison Club and G. E. Realty Corp. for the purchase of The Edison Club properties will be finalized on or about April 1, 1966, and that the current Board anticipates that an additional change to the dues structure at that time, bringing both Regular and Associate total monthly charges to \$27.00 per month will be required, as a maximum to accomplish the purchase and maintain the property in a sound physical and financial condition. The final determination of the dues structure to go into effect on April 1, 1966 will of course be the decision of the existing Board of Directors in February, 1966.

[- 12 -]

By letter dated March 8, 1965, under the letter-head of "The Edison Club," which was sent to each member, Mr. J. T. Burns, President, advised the members as follows:

Dear Member:

With the conversion of the Trophy Room to a formal dining room and we have now completed the projects included in my letter to you about a year ago. The Club facilities and the grounds are now in excellent condition for the coming year with the exception of the tree damage resulting from the December fourth ice storm. So that we may maintain the natural beauty of the golf course it becomes necessary to seek professional aid in the pruning and care of the trees and shrubbery that were so damaged and quotes and estimates have been received and are being evaluated.

As we advised you at the annual meeting in January, the requirements of additional funds with which to purchase the Club facilities from the General Electric Company necessitate a dues and assessment increase as of April 1, 1965. There are secondary considerations affecting this increase but they have an equivalent degree of necessity. Included among these are the pure cost of maintenance at current operating levels which represent an increase over prior years' cost of salary increases and cost of material increases; capital improvements, a continuing demand of any country club and our progressive moves toward creating a "closed" club.

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Extensive studies have been made to develop figures which would generate the needed funds but minimize adversities with respect to membership. We are not seeking to create a surplus or to move in the direction of a luxury club. Our figures are based on a price which as yet has not been finalized but the Board feels it expedient to put this increase into effect immediately so as to produce the equity money essential to the ultimate acquiescence, i.e., a down payment.

* * *

With all these factors in mind then we have come up with a dues structure, copy of which is attached. It is predicated on a two step increase, the first of which would be effective April first of this year and the second one year hence, subject to further Board review and approval. The schedule is self-explanatory.

As usual we welcome your comments.

We will be mailing out the membership cards sometime later in the month.

Yours very truly,

/s/ J. T. Burns

President

As set forth therein, there was attached to said letter the dues, assessments, and tax to be charged to the members for the fiscal year beginning April 1, 1965 and the proposed charges for the fiscal year beginning April 1, 1966, as follows:

EDISON CLUB

Dues Structure Effective 4/1/65

Type of Membership	Per Month				Per Year				Initiation Fee
	Dues	Excise Tax on Dues	Assessment	Total	Dues	Excise Tax on Dues	Assessment	Total	
Regular	\$15.83	\$3.17	\$4.00	\$23.00	\$190.00	\$38.00	\$48.00	\$276.00	\$200.00
Associate	18.33	3.67	4.00	26.00	220.00	44.00	48.00	312.00	200.00
House	6.25	1.25	.75	8.25	75.00	15.00	9.00	99.00	150.00-
Women	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	200.00
Women affiliate	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	200.00
Senior	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	-
Junior card #1	2.08	.42	-	2.50	25.00	5.00	-	30.00	-
Junior card #2	1.25	.25	-	1.50	15.00	3.00	-	18.00	-
Junior card #3	.83	.17	-	1.00	10.00	2.00	-	12.00	-
Swimming pool	3.33	.67	-	4.00	40.00	8.00	-	48.00	36.00

Proposed Dues Structure To Be Effective 4/1/66

Regular	\$19.17	\$3.83	\$4.00	\$27.00	\$230.00	\$46.00	\$48.00	\$324.00	\$200.00
Associate	19.17	3.83	4.00	27.00	230.00	46.00	48.00	324.00	200.00
House	6.25	1.25	.75	8.25	75.00	15.00	9.00	99.00	150.00-
Women	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	200.00
Women affiliate	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	200.00
Senior	8.13	1.62	1.00	10.75	97.50	19.50	12.00	129.00	-
Junior card #1	2.08	.42	-	2.50	25.00	5.00	-	30.00	-
Junior card #2	1.25	.25	-	1.50	15.00	3.00	-	18.00	-
Junior card #3	.83	.17	-	1.00	10.00	2.00	-	12.00	-
Swimming pool	3.33	.67	-	4.00	40.00	8.00	-	48.00	36.00

(a- House members joining after 4/1/65 who later transfer to regular membership will be liable for the difference in initiation fees between these two types of membership.

[- 15 -]

During this period, representatives of the Club were attempting to initiate negotiations with the General Electric Realty Corp. for the purchase of the real property used by the Club. In the minutes of the annual meeting, held December 3, 1965, the following is reported:

President Burns then answered questions from the floor regarding:

- A. Equalization of Dues - up to the Board of Directors in accordance with the Constitution, Article VIII; and that it was felt that regardless of the outcome of the balloting, that there was strong sentiment on the current Board of Directors to equalize the Dues, and that equalization might be accomplished at a lower level than previously contemplated because of the repeal of the twenty (20) percent Excise Tax scheduled for repeal on January 1st, 1966.
- B. Future Income Tax - estimated at about one thousand (\$1,000) per year not counting the fact that in 1966 the money now exempt from tax received as Excise Tax, would now be income.
- C. Cash Accrual for Club Purchase - estimated at approximately fifty thousand dollars (\$50,000) now and approximately eighty thousand (\$80,000) by the end of 1966. The Club plans to mortgage and has received assurance from several banks that they are eager to provide the mortgage funds.

[- 16 -]

On December 21, 1965, the petitioner was advised that its qualification for exemption from Federal income tax as an organization defined in section 501(c)(7) was revoked for all taxable years subsequent to March 31, 1959.

A meeting of the board of directors was held on February 10, 1966. The following appears in the minutes of that meeting:

Club Purchase - Escrow Account

J. T. Burns stated he had been in contact with R. L. Yowell, concerning a meeting to discuss the purchase of the Club. Due to the press of business, Mr. Yowell requested a deferment of the meeting until late in February or early March. J. T. Burns will again contact Mr. Yowell the last week in February if nothing further has been heard by that time.

J. T. Burns and F. A. Pasley were authorized to open an interest bearing savings account in escrow at the Schenectady Trust Company, which will be used for the deposit of the monthly excise tax saving. The escrow will be earmarked for the down payment of the purchase price. The escrow will be established retroactive to January 1, 1966. The first deposit will be \$3,390 which is the savings in excise tax realized in January 1966.

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A meeting of the board of directors was held on March 10, 1966. The following appears in the minutes of that meeting:

Minutes of Meeting, February 10, 1966

The February Minutes were amended as follows:

- a. Paragraph A-6, Page 3 - A Club Purchase escrow account has been opened in the Schenectady Savings Bank, not The Schenectady Trust Company as noted in the February Minutes.
- b. Paragraph A-6, Page 3 - The first deposit in the escrow account was in the amount of \$5,502, rather than \$3,390. Deposits in this account will be limited to savings on the Excise Tax on Club Dues and Initiation Fees only.⁵

The proposed dues structure to be effective April 1, 1966, which had been transmitted to the members by letter dated March 8, 1965, was not adopted for the fiscal year beginning April 1, 1966. As a

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The amount credited to the general ledger account No. 501 - Assessments totaled \$3,273. The Court could not identify any account in the records of the Club from which the sum of \$3,390 and the sum of \$5,502 was derived.

[- 18 -]

result of the repeal of the excise tax, the board of directors apparently concluded that sufficient funds would be available without an increase in the dues.

During the fiscal year beginning April 1, 1966, the members were billed on the basis of the total charges set forth in the dues structure which became effective April 1, 1965, notwithstanding repeal of the excise tax. The records submitted by the petitioner failed to disclose any action by the board of directors approving said schedule of charges or advising the members with respect to any amount therein which represented a contribution to capital or assessment either for the purpose of capital replacement or for the purpose of the purchase of the club property.

A meeting of the board of directors was held on April 21, 1966. The following appears in the minutes of that meeting:

Budget - 1966-67

The final 1966-67 budget was presented to the Board by Treasurer, F. A. Pasley. The Budget forecasts gross revenues of \$349,410, expenses

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of \$283,415, and a net income before Federal Taxes of \$65,995. Comparable actual figures for the past twelve months are net revenue, \$312,074, expenses \$284,679 and net income \$27,395, before Federal Income Tax. The Budget was approved.

Capital Improvement Budget

Capital Improvement Budget items were approved as follows:

Aerifying machine	\$1,500	Already purchased
Pool Repairs	7,000	Under Contract
Ballroom a/c unit	1,200	Under Contract
Cushman Truck	1,400	On Order
Mower	1,700	
Pool Chairs	750	
Ballroom Tables	930	
New Power-Line to Control House	900	O.K. if needed
Sidewall Lights-Ballroom	400	O.K. - Get professional adv.
Foyer Renovation	?	Get Culver to present plan
Resurface Parking Lot	-	Hold in abeyance

An annual meeting of the members of the Club was held on December 2, 1966. At that meeting, the following report was received:

Status of Negotiations on the Club Purchase -
G. E. Company had just made offer to sell Club for \$500,000 and assume 25 year mortgage at the prime interest rate enjoyed by the Company. The Negotiating Committee is considering the offer and will make a counter offer.

[- 20 -]

A meeting of the board of directors was held on February 9, 1967. The following appears in the minutes of that meeting:

Budgets - 1967

Walter Kleczek reviewed the preliminary budgets explaining the highlights of the proposals. The Board was asked to carefully review the proposed budgets. In the meantime, all budgets will be revised and returned to Walter Kleczek by February 17, 1967. The Board shall meet at 7:30 P.M., February 23, 1967, to review the revised budgets. All Board Members were asked to carefully review the dues structure.⁶

A meeting of the board of directors was held on February 23, 1967. The following appears in the minutes of that meeting:

Dues Structure

After careful consideration of the higher operating costs of the Club, the decrease in membership and the lower net income from the Restaurant operation, Schedule "D" of the dues structure was accepted by the Board. A letter shall be drafted and sent to the members explaining the reasons for the dues increase.

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The budgets referred to in these minutes, which might have established more specifically the intent of the board of directors in subsequently adopting the dues structure, were not offered in evidence.

[- 21 -]

By letter dated March 9, 1967, under the letterhead of "The Edison Club," which was sent to each member, Mr. John T. Miller, President, advised the members as follows:

Dear Member:

The same increases in the cost of living and doing business which affect you, as you might reasonably expect, are also felt by The Edison Club in conducting its operations. The increases in the cost of supplies, equipment, taxes, and labor (\$5,000/yr for three years starting in 1966) together with the continuing need to accumulate funds for the down payment needed for the Club purchase, have all combined to require your Board of Directors to establish the attached new schedule of dues, to become effective April 1st, 1967.

The Board of Directors has studied the needs of the Club and its anticipated status over the next several years very extensively before arriving at its decision. All department budgets submitted were reviewed and pared to minimum limits consistent with good business practice. Several dues structures were developed and analyzed before this one was selected. The new dues structure has been designed, without placing an undue burden on the membership, to meet the Club's needs to:

1. Maintain our facilities and equipment with only modest improvements over the next eighteen to twenty four months, and,

[- 22 -]

2. Meet our scheduled cost increases, principally the cost of labor, while we,
3. Accumulate the necessary down payment and accomplish the Club purchase - and then
4. Permit your Board of Directors to initiate some of the major improvement programs which you have expressed a desire for.

You will note that the attached dues schedule is identical with the one which had been scheduled to go into effect April of 1966 with two exceptions. The dues structure for Women and Seniors has been adjusted to one-half of the rate established for Regular and Associate Members, and the rate for Juniors has been established at approximately one-eight [sic] of the Regular and Associate rate. The Junior rates apply, as in the past, only to those Juniors who wish to play without being accompanied by a parent.

Our Office staff is currently busily engaged in preparing membership cards for the coming year and I urge you to return your questionnaire for family cards if you have not already done so.

Bob Mitchell, our Manager of Golf and Facilities, currently vacationing with his son in San Diego, advised me before he left that the course seems to have wintered very well, and that we can all look forward to an even finer golf course this year.

In behalf of the entire Board, I would like to extend to you and your families our best wished [sic] for a most enjoyable 1967 Club season. Your membership cards will be seperately [sic] mailed to you during the month, and as usual we welcome your comments regarding any phase of Club operation and policy.

Yours very truly,

/s/

John P. Miller,
President 1967 - 68

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The dues schedule which was attached to said letter setting forth the charges for the members for the fiscal year beginning April 1, 1967, was as follows:

THE EDISON CLUB

Dues Structure Effective 4/1/67
(Per Month)

<u>Category</u>	<u>Dues</u>	<u>St. Tax</u>	<u>Total Dues</u>
Regular	27.00	.54	27.54
Associate	27.00	.54	27.54
House	8.25	.17	8.42
Women	13.50	.27	13.77
Senior	13.50	.27	13.77
Junior # 1	3.50	.07	3.57
2	1.50	.03	1.53
3	1.00	.02	1.02
Pool	4.00	.08	4.08
<u>Initiation Fees</u>			
Regular	200.00	4.00	204.00
Associate	200.00	4.00	204.00
House	150.00 (a)	3.00	153.00
Women	200.00	4.00	204.00
Pool	36.00	.72	36.72

- (a) House members joining after 4/1/65, who later transfer to Regular membership, will be liable for the difference in Initiation Fee between these two classes of membership.

[- 24 -]

A meeting of the board of directors was held on March 9, 1967. The following appears in the minutes of that meeting:

Budgets

With some minor changes, all budgets were approved. Walter Kleczek to revise the budgets with the approved changes included. The revised budgets are to be sent to all Board Members.

Salaries changes were approved and should be included in the revised budgets.

At all times material herein, to and including the fiscal year ended March 31, 1968, the members were required as a condition of membership to pay the dues and other charges in accordance with the schedule of dues approved by the board of directors. Regular members, being employees of General Electric Co., could elect to have the said payment deducted from their salary by General Electric Co. and paid directly to the Club. For members so electing, the amount deducted was noted on their payroll stub under the heading "Edison Club." Other members were billed monthly. Such billings did not show the components of the total monthly charge such as dues, assessment, excise tax, and the like.

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Dues billings and all other receipts of the Edison Club, regardless of source, were deposited in the Club's general checking account.

The records maintained by the Club included a general journal, a cash receipts journal, a cash disbursements journal, a general ledger, and an accounts receivable ledger. The content of these records was, as follows:

General Journal - A record showing payables and receivables from the various general ledger accounts.

Cash Receipts Journal - A record of receipts by source with selected items, such as food and beverage sales, on account of which the New York State sales tax applied, segregated. Amounts received as dues, assessments, and Federal excise tax on dues (when applicable) were not shown separately in this record.

Cash Disbursements Journal - A record of disbursements showing the payee and, in some cases, the purpose for which the funds were disbursed. The nature of the disbursement, whether chargeable to the

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capital account or to expense, was not shown in this record. The Federal excise tax on dues (when applicable) was shown under a column entitled "Miscellaneous" and identified as "Dues tax."

General Ledger - This record consisted of various numbered accounts, including the following:

- No. 015 Schenectady Savings Bank -
Purchase a/c
- No. 200 Plant and Equipment
- No. 210 Reserve for Depreciation -
Current Year
- No. 220 Reserve for Depreciation -
Previous Years
- No. 330 Excise Tax - Collected
Dues, Pool Dues, Locker and
Admission Taxes⁷
- No. 500 Club Dues
- No. 501 Assessments⁸
- No. 503 Club Initiation Fees
- No. 510 Dues - Pool
- No. 513 Initiation Fees - Pool

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Upon the repeal of the Federal excise tax on dues, Account No. 330 - Excise Tax was closed out, and the balance of \$3,434.79 paid to the district director of internal revenue.

8

There was penciled in the designation "Capital Improvements" for this account. However, the monthly financial statements (Ex. 24-X) show that this change in nomenclature was not adopted until after April 1, 1968.

[- 27 -]

Accounts Receivable Ledger - A ledger card was maintained for each member on which were posted the charges incurred by such member for dues, food and beverages, and other activities. During the taxable years involved in this proceeding, the total amount billed as dues was entered on the card as such and a separate entry was made to reflect the New York State tax which amounted to 2 percent. There was no provision on this card to show separately either the Federal excise tax or the so-called "assessments."

For the taxable years involved in this proceeding, Account No. 015 - Schenectady Savings Bank - Purchase a/c reflected total debits on account of deposits, as follows:

<u>4/2/67</u>	<u>3/31/68</u>
\$43,109.95	\$39,396.31

On March 31, 1968, there was credited to this account the sum of \$70,000 on account of a withdrawal for the purpose of making the downpayment on the purchase of the Club's property, leaving a balance as of March 31, 1968, of \$12,506.26. During the taxable year ended March 31, 1969, additional debits totaled \$23,012.57, resulting in a balance of \$35,518.83. There were no further withdrawals.

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For the taxable years involved in this proceeding, Account No. 501 - Assessments reflected credits on account of the amounts which petitioner claims as a contribution to capital, as follows:⁹

<u>4/2/67</u>	<u>3/31/68</u>
\$38,925.48	\$38,354.82

For the taxable years involved in this proceeding, Account No. 200 - Plant and Equipment reflected total debits on account of capital expenditures or additions, as follows:

<u>4/2/67</u>	<u>3/31/68</u>
\$22,708.69	\$23,390.72

This account also reflected credits on account of the retirement of capital assets (scrapping, trade in, etc.), as follows:

<u>4/2/67</u>	<u>3/31/68</u>
\$8,933.23	\$17,925.40

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A closing entry appearing in the General Journal reflecting such credits is set forth below.

For the taxable years involved in this proceeding, Account No. 210 - Reserve for Depreciation - Current Year shows total credits, as follows:

<u>4/2/67</u>	<u>3/31/68</u>
\$35,182.17	\$33,709.51

In the General Journal, the credits to Account No. 210 - Reserve for Depreciation - Current Year were charged as an expense to the various operations of the Club. In order to avoid duplication of the credits to the reserve, a closing entry in the General Journal transferred the total depreciation reflected in this account directly to Account No. 220 - Reserve for Depreciation - Previous Years.

A closing entry was entered in the General Journal as of March 31, 1967, transferring from Profit and Loss to Surplus the sum of \$49,056.58, as follows:

500	Dues	\$213,740.31	
501	Assessments	38,925.48	
503	Club Init. Fees	18,384.00	
504	Greens Fees	8,170.50	
505	Locker Fees	3,277.46	
510	Dues - Pool	34,718.00	
513	Init. Fees Pool	2,556.00	
514	Pool Fees	2,596.25	
515	Other Income	2,317.84	
520	Restaurant Sales Food	162,275.82	
521	Liquor	95,471.89	
522	Beer	12,474.87	
523	Misc.	1,500.75	
524	Cash o/s		\$ 41.54
530	Hall Rental	2,069.82	
600	S. Pool		29,285.11
601	Golf Course M.		60,601.70
602	House Op.		58,383.69
603	Admin.		20,107.70
604	Rent		19,222.20
605	Prop. & School Tax		16,269.77
606	Taxes - S.S., N.Y.S. & Fed.		15,794.12
607	Buildings		17,869.39
608	Insurance		10,180.96
609	Publicity		1,414.32
610	Golf Comm.		1,887.06
611	Jr. Activities		805.30
612	Athletic Comm.		131.14
613	Entertainment		7,262.11
614	Pro Shop		8,075.85
615	Grounds - Tennis Rink		5,611.69
616	Miscellaneous Exp.		947.41
616A	Interest Expense		2,003.09
617	Retirement - Club P.		6,919.64
619	Restaurant Purch Food		103,817.90
620	Liquor		40,481.68
621	Beer		7,208.87
622	Misc.		1,864.15
623	Supplies		3,553.04
624	Restaurant Payroll K & D		74,911.40
625	Bar		17,693.35
626	Restaurant Expense		17,078.23
420	Profit & Loss		49,056.58
420	Profit & Loss	\$ 49,056.58	\$ 49,056.58
410	Surplus		

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A closing entry was entered in the General Journal as of March 31, 1968, transferring from Profit and Loss to Surplus the sum of \$61,186.58, as follows:

500	Club Dues	\$238,785.39	
501	Assessments	38,354.82	
503	Club Initiation Fee	19,040.00	
504	Green Fees	8,543.00	
505	Locker Fees	3,482.40	
510	Dues - Pool	32,992.00	
513	Pool Initiation Fees	3,240.00	
514	Pool Fees	2,227.50	
515	Other Income	4,874.86	
520	Restaurant Sales - Food	181,668.15	
521	Liquor	105,803.49	
522	Beer	12,260.33	
523	Mis.	1,327.80	
524	Restaurant Cash c/c	51.81	
530	Hall Rental	2,597.48	
600	Swimming Pool		\$ 30,360.84
601	Golf Course Maint.		63,547.15
602	House Operation		61,921.78
603	Administrative		21,095.91
604	Rent		18,967.41
605	Property & School Taxes		21,421.92
606	Taxes - S.S., N.Y.S. & Fed.		16,439.87
607	Building Maint.		25,011.73
608	Insurance		10,465.31
609	Publicity		1,189.87
610	Golf Activities - Expense		2,328.70
611	Junior Activities		367.24
612	Athletic Committee		525.61
613	Entertainment		8,906.44
614	Pro Shop		8,690.02
615	Grounds, Tennis, Rink		6,580.84
616	Mis. Expense		9,169.90 ¹⁰

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A penciled correction increased the Mis. Expense of \$9,169.90 by \$4.50. To balance this, further penciled adjustments decreased the following items by \$4.50:
 Account No. 420 - Profit & Loss (to close Income and Expense to Profit & Loss); Account No. 420 - Profit & Loss;
 Account No. 410 - Surplus (to close Profit & Loss to Surplus).

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616A	Interest Expense		\$ 1,188.58
617	Retirement (Club P.)		7,420.62
619	Restaurant Purchaser - Food		113,344.45
620		Liquor	40,760.86
621		Beer	6,584.65
622		Mis.	1,825.72
623		Supplies	4,437.22
624	Res. K & D Payroll		77,064.19
625	Bar Payroll		17,823.95
626	Rest. Expense		16,621.67
420	Profit & Loss		61,186.58
	To close Income and Expense		
	to Profit & Loss		
420	Profit & Loss	\$ 61,186.58	
410	Surplus		61,186.58
	To close Profit & Loss to		
	Surplus		

A Balance Sheet and Statement of Revenue and Expenses was prepared each year for distribution to the membership.¹¹ For the years involved in this proceeding, said financial statements included the following:

¹¹

It is not clear whether such distribution was made solely to the regular members, who would be called upon to vote, or to other classes of members as well.

THE EDISON CLUB
BALANCE SHEET (FINAL)
PERIOD ENDED April 2, 1967

	<u>MARCH</u>	<u>FEBRUARY</u>
<u>CURRENT ASSETS</u>		
Cash-General Operating	18 959	12 463
Cash-Savings Banks	15 601	14 527
Cash-Purchase A/C	43 110	39 149
Accounts Receivable		
Members	38 484	29 123
Less Res. for Bad Debts	(1 046)	(1 046)
Other	5 183	3 158
Restaurant Inventory	<u>14 179</u>	<u>14 831</u>
Total Current Assets	134 741	112 205
Plant & Equipment	597 167	606 100
Less Res. for Depreciation	(317 844)	(323 581)
Prepaid Expenses	<u>11 962</u>	<u>13 517</u>
TOTAL ASSETS	<u>425 755</u>	<u>408 241</u>
<u>LIABILITIES & EQUITY</u>		
Current Liabilities:		
Accounts Payable	9 832	11 314
Taxes Accrued	2 136	1 727
Interest Accrued	1 110	965
Other Accrued Liabilities	1 458	1 346
Notes Payable (1 year)	1 250	2 500
Deferred Income	14 070	6 504
Sundry Creditors	12 602	8 017
Federal Income Tax Accrued	<u>3 659</u>	<u>3 659</u>
Total Current Liabilities	46 117	36 032
<u>LONG TERM LIABILITIES</u>		
Notes Payable	25 000	25 000
Bonds Payable	<u>43 325</u>	<u>43 325</u>
Total Long Term Liabilities	68 325	68 325
<u>CLUB EQUITY</u>		
Surplus	262 256	262 256
Net Addition to Surplus, Year-to-Date	<u>49 057</u>	<u>41 628</u>
Total Surplus & Equity	311 584	303 884
TOTAL LIABILITIES & EQUITY	<u>425 755</u>	<u>408 241</u>

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THE EDISON CLUB
STATEMENT OF REVENUE AND EXPENSES
PERIOD ENDED APRIL 2, 1967

	Month of March		12 Months, Year-to-Date	
	Actual	\$ V.B.	Actual	\$ V.B.
<u>REVENUE</u>				
Club Dues	16 541	(1 459)	213 740	(7 288)
Club Initiation Fees	1 000	(500)	18 384	3 384
Club Assessment	3 085	(165)	38 925	(1 113)
Pool Dues	2 728	(222)	34 718	(1 282)
Pool Initiation Fees	36	(144)	2 556	756
Restaurant (Net)	(910)	(2 353)	7 145	(13 199)
All Other-Golf Fees	-0-	-0-	8 170	(830)
Locker Rent	-0-	-0-	3 277	(23)
Pool Fees	-0-	-0-	2 596	(104)
Sundry & Interest	2 232	2 132	2 318	2 118
Total Revenue	24 712	(2 711)	331 829	(17 581)
<u>EXPENSES</u>				
Swimming Pool	1 392	(73)	29 285	2 240
Golf Course Maintenance	2 505	(497)	60 602	96
House Operation	4 766	(340)	58 384	(1 657)
Administrative	1 500	(265)	20 107	(109)
Building Maintenance	1 158	(845)	17 870	1 138
Rent	1 602	-0-	19 222	-0-
Taxes	2 282	(218)	32 063	724
Insurance	(235)	(1 635)	10 181	(2 153)
Activity Expense	967	332	11 500	160
Pro Shop	88	88	8 076	(32)
Grounds Maintenance	163	3	5 612	(1 590)
Retirement Plan	648	48	6 920	(1 105)
All Other	448	393	2 950	1 645
Total Expenses	17 284	(3 009)	282 772	(643)
NET INCOME	7 428	298	49 057	(16 938)

THE EDISON CLUB
SUMMARY OF RESTAURANT OPERATIONS
PERIOD ENDED APRIL 2, 1967

	Month of March			12 Months, Year-to-Date		
	Actual	\$ V.B.	% of Sales	Actual	\$ V.B.	% of Sales
<u>SALES</u>						
Food	9 454	1 454	60.98	162 276	16 276	59.72
Liquor	5 472	472	35.29	95 472	8 972	35.14
Beer	522	122	3.37	12 475	1 175	4.59
Miscellaneous	56	(44)	.36	1 501	301	.55
Total Sales	15 504	2 004	100.00	271 724	26 724	100.00
<u>COST OF GOODS SOLD</u>						
Food	5 779	1 379	61.13	103 818	17 183	63.97
Liquor	2 201	201	40.22	40 482	6 782	42.40
Beer	264	44	50.57	7 209	886	57.79
Miscellaneous	102	2	182.14	1 864	664	(130.85)
Total Cost	8 346	1 626	53.83	153 373	25 515	56.44
<u>GROSS MARGIN</u>						
Food	3 675	75	38.87	58 458	(907)	36.03
Liquor	3 271	271	59.78	54 990	2 190	57.60
Beer	258	78	49.43	5 266	289	42.21
Miscellaneous	(46)	(46)	(82.14)	(363)	(363)	(30.85)
Total Margin	7 158	378	46.17	118 351	1 209	43.56
<u>GENERAL EXPENSES</u>						
Salaries & Wages	5 520	1 200	35.60	92 605	13 205	34.08
Supplies	292	142	1.88	3 553	413	1.31
Laundry	357	(43)	2.30	5 651	(123)	2.08
Kitchen & Table	1 193	1 143	7.70	2 659	477	.98
Depreciation	566	289	3.65	3 613	289	1.33
Vehicle Operation	74	54	.49	581	343	.21
Rental & Repair	78	58	.50	1 371	733	.51
Other	31	(69)	.20	3 202	50	1.18
Total Expenses	8 111	2 774	52.32	113 235	15 387	41.68
<u>INCOME FROM SALES</u>	(953)	(2 396)	(6.15)	5 116	(14 178)	1.88
<u>OTHER INCOME</u>						
Hall Rental	49	49	.32	2 070	1 020	.76
Cash Over/Short	(6)	(6)	(.04)	(41)	(41)	(.01)
Total Other Income	43	43	.28	2 029	979	.75
<u>NET INCOME</u>	(910)	(2 353)	(5.87)	7 145	(13 199)	2.63

FINAL STATEMENT

THE EDISON CLUB
BALANCE SHEET
PERIOD ENDED MARCH 31, 1968

<u>CURRENT ASSETS</u>	<u>MARCH</u>	<u>FEBRUARY</u>
Cash-General Operating	14 868	11 892
Cash-Savings Banks	26 137	33 601
Cash-Purchase Account	12 506	81 527
Accounts Receivable:		
Members	35 343	32 343
Less Res. for Bad Debts	(1 046)	(1 046)
Other	2 649	1 748
Restaurant Inventory	13 603	15 238
 Total Current Assets	 104 060	 175 303
 Land	 175 000	 -0-
Buildings	300 384	-0-
Plant & Equipment	602 632	615 379
Less Res. for Depreciation	(335 262)	(348 744)
Prepaid Expenses	28 824	31 428
 TOTAL ASSETS	 875 638	 473 366
 <u>LIABILITIES & EQUITY</u>		
Current Liabilities		
Accounts Payable	23 684	23 749
Taxes Accrued	3 506	2 646
Interest Accrued	741	678
Other Accrued Liabilities	1 652	1 412
Notes Payable (1 yr.)	-0-	10 250
Deferred Income	13 608	7 227
Sundry Creditors	8 920	8 854
Federal Income Tax	11 159	3 659
 Total Current Liabilities	 63 270	 58 475
 <u>LONG TERM LIABILITIES</u>		
Notes Payable	11 250	11 250
Bonds Payable	31 125	31 525
Mortgage Payable	405 000	-0-
 Total Long Term Liabilities	 447 375	 42 775
 <u>CLUB EQUITY</u>		
Surplus	303 812	311 312
Net Addition to Surplus, Yr-to-	61 181	60 804
Date	364 993	372 116
 TOTAL LIABILITIES & EQUITY	 875 638	 473 366

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FINAL STATEMENT

THE EDISON CLUB
STATEMENT OF REVENUE AND EXPENSES
PERIOD ENDED MARCH 31, 1968

	Month of March		12 Months, Year-to-Date	
	Actual	\$ V.B.	Actual	\$ V.B.
<u>REVENUE</u>				
Club Dues & Assessments	21 950	(1 470)	277 140	(7 290)
Club Initiation Fees	2 488	1 088	19 040	4 040
Pool Dues	2 594	(106)	32 992	(1 904)
Pool Initiation Fees	396	216	3 240	1 440
Restaurant (Net)	(1 245)	(1 809)	25 245	11 746
All Other-Golf Fees	-0-	-0-	8 543	543
Locker Rent	-0-	-0-	3 482	262
Pool Fees	-0-	-0-	2 228	(272)
Sundry & Interest	2 563	2 463	4 875	4 675
Total Revenue	28 746	382	376 785	13 240
<u>EXPENSES</u>				
Swimming Pool	2 493	1 016	30 361	1 767
Golf Course Maintenance	2 792	(723)	63 547	(2 384)
House Operation	5 057	82	61 922	(109)
Administrative	1 633	(358)	21 096	(307)
Building Maintenance	6 852	5 454	25 012	7 720
Rent	1 281	(321)	18 967	(255)
Taxes	3 462	568	37 862	3 167
Insurance	(11)	(1 497)	10 465	(2 021)
Activity Expense	1 733	873	13 318	518
Pro Shop	(10)	(10)	8 690	710
Grounds Maintenance	272	(128)	6 580	(1 023)
Retirement	440	(262)	7 421	(904)
Other	2 375	2 260	10 363	9 058
Total Expenses	28 369	6 954	315 604	15 937
NET INCOME	377	(6 572)	61 181	(2 697)

FINAL STATEMENT

THE EDISON CLUB
SUMMARY OF RESTAURANT OPERATIONS
PERIOD ENDED MARCH 31, 1968

	Month of March			12 Months, Year-to-Date		
	Actual	\$ V.B.	% of Sales	Actual	\$ V.B.	% of Sales
<u>SALES</u>						
Food	10 552	3 552	56.52	181 668	29 668	60.35
Liquor	7 676	3 176	41.11	105 803	19 303	35.14
Beer	364	(36)	1.95	12 260	1 060	4.07
Miscellaneous	79	29	.42	1 328	228	.44
Total Sales	18 671	6 721	100.00	301 059	50 259	100.00
<u>COST OF GOODS SOLD</u>						
Food	7 301	3 101	69.19	113 344	20 519	62.39
Liquor	2 593	793	33.78	40 761	6 831	38.53
Beer	273	33	75.00	6 585	292	53.71
Miscellaneous	94	44	118.99	1 826	726	(137.50)
Total Cost	10 261	3 971	54.96	162 516	28 368	53.98
<u>GROSS MARGIN</u>						
Food	3 251	451	30.81	68 324	9 149	37.61
Liquor	5 083	2 383	66.22	65 042	12 472	61.47
Beer	91	(69)	25.00	5 675	768	46.29
Miscellaneous	(15)	(15)	(18.99)	(498)	(498)	37.50
Total Margin	8 410	2 750	45.04	138 543	21 891	46.02
<u>GENERAL EXPENSES</u>						
Salaries & Wages	6 293	2 109	33.71	94 888	8 669	31.52
Supplies	195	45	1.04	4 437	1 202	1.47
Laundry	386	36	2.07	5 911	596	1.96
Kitchen & Table	2 669	2 619	14.29	3 766	1 816	1.25
Depreciation	222	-0-	1.19	2 664	-0-	.89
Vehicle Operation	24	9	.13	50	(165)	.01
Rental & Repair	42	17	.22	962	282	.32
Other	98	(2)	.53	3 269	94	1.09
Total Expenses	9 929	4 833	53.18	115 947	12 494	38.51
INCOME FROM SALES	(1 519)	(2 083)	(8.14)	22 596	9 397	7.51
<u>OTHER INCOME</u>						
Hall Rental	279	279	1.49	2 597	2 297	.86
Cash Over/Short	(5)	(5)	(.02)	52	52	.02
Total Other Income	274	274	1.47	2 649	2 349	.88
NET INCOME OR LOSS	(1 245)	(1 809)	(6.67)	25 245	11 746	8.39

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On August 28, 1967, petitioner by letter extended an offer to the General Electric Realty Corp. to purchase the Edison Club property. The offer was accepted on December 29, 1967. On or about March 27, 1968, petitioner withdrew the sum of \$70,000 from the savings account in the Schenectady Savings Bank to make a downpayment on the purchase price of the club property.

In computing its gross income for the fiscal year ended March 31, 1967, petitioner included \$25,025 from a source iⁿ denominated as "club assessments" thereby excluding \$13,900.48 of the total of \$38,925.48 credited to "Account No. 501 Assessments" for that year.¹² That return was filed on October 30, 1967.

For the fiscal year ended March 31, 1968, petitioner excluded the total of \$38,354.82 credited to "Account No. 501 Assessments" for that year.

¹²

Net additions to Account No. 200 - Plant and Equipment amounted to \$13,775.46.

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In his notice of deficiency, the respondent determined that for the fiscal year ended March 31, 1967, the income of the petitioner should include so-called "assessments" in the amount of \$38,925 in lieu of the \$25,025 reported on the return and that for the fiscal year ended March 31, 1968, income of the petitioner should include so-called "assessments" in the amount of \$38,355. He also determined that a penalty of \$463.05 was due pursuant to section 6651 on account of the Club's failure to file a timely return for the fiscal year ended March 31, 1967.

OPINION

The petitioner is a nonstock membership corporation organized under the laws of the State of New York as a social and recreational club. Petitioner concedes that during the taxable years ending March 31, 1967 and 1968, petitioner did not qualify as an organization exempt from tax under section 501. This proceeding relates solely to the determination of the income to be taxed.

The petitioner argues that certain amounts credited to an account designated "No. 501 Assessments" should be excluded in computing taxable income as a contribution to capital within the meaning of section 118. We find this position wholly lacking in merit.

Section 118 provides that "gross income does not include any contribution to the capital of the taxpayer."¹³ The section was embodied in the initial

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By analogy, sec. 4241 imposed a tax of 20 percent on the amounts paid as dues or membership fees to a social, athletic, or sporting club, if the total dues or fees paid exceeded \$10 per year. Sec. 4243(b) exempted from said tax "any amount paid as dues or membership fees or as initiation fees" for certain specific purposes such as construction, reconstruction, or capital additions. While the issue before the Court does not relate to that exemption, petitioner apparently initiated a procedure of including "assessments" in its dues structure in order that a corresponding amount expended on capital improvements could be relied upon to provide an exemption from the excise tax for the portion of the dues set aside for such expenditure. Whether the procedures followed by the petitioner were sufficient to entitle it to that exemption, we need not decide. In fact, the applicability of sec. 4243(b) is not limited to "capital contributions" within the scope of sec. 118.

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enactment of the Internal Revenue Code of 1954 (Pub. L. No. 591, 83d Cong., 2d Sess., (August 16, 1954)). In explanation thereof, the report of the Committee on Ways and Means states:¹⁴

H. Contributions to the capital of a corporation (secs. 118,355)

Your committee's bill provides that in the case of a corporation, gross income is not to include any contribution to the capital of the taxpayer. This in effect places in the code the court decisions on this subject. It deals with cases where a contribution is made to a corporation by a governmental unit, chamber of commerce, or other association of individuals having no proprietary interest in the corporation. In many such cases because the contributor expects to derive indirect benefits, the contribution cannot be called a gift; yet the anticipated future benefits may also be so intangible as to not warrant treating the contribution as a payment for future services.

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H. Rept. No. 1337, 83d Cong., 2d Sess., p. 17 (1954).

In section 1.118-1, Income Tax Regs., the respondent defines a contribution to the capital of a corporation as follows:

§1.118-1 Contributions to the capital of a corporation.

In the case of a corporation, section 118 provides an exclusion from gross income with respect to any contribution of money or property to the capital of the taxpayer. Thus, if a corporation requires additional funds for conducting its business and obtains such funds through voluntary pro rata payments by its shareholders, the amounts so received being credited to its surplus account or to a special account, such amounts do not constitute income, although there is no increase in the outstanding shares of stock of the corporation. In such a case the payments are in the nature of assessments upon, and represent an additional price paid for, the shares of stock held by the individual shareholders, and will be treated as an addition to and as a part of the operating capital of the company. Section 118 also applies to contributions to capital made by persons other than shareholders. For example, the exclusion applies to the value of land or other property contributed to a corporation by a governmental unit or by a civic group for the purpose of inducing the corporation to locate its business in a particular community, or for the purpose of enabling the corporation to expand its operating facilities. However, the exclusion does not apply to any money or property transferred to the corporation in consideration for goods or services rendered, or to subsidies paid for the purpose of inducing the taxpayer

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to limit production. See section 362 for the basis of property acquired by a corporation through a contribution to its capital by its stockholders or by nonstockholders.

The petitioner cites cases such as Minnequa University Club, T.C. Memo. 1971-305; Lake Petersburg Association, T.C. Memo. 1974-55, and the so-called cooperative housing cases (874 Park Avenue Corporation, 23 B.T.A. 400 (1931); Cambridge Apartment Building Corporation, 44 B.T.A. 617 (1941); and Eckstein v. United States, 452 F. 2d 1036 (Ct. Cl. 1971)) in support of its position and attempts to distinguish others, such as United Grocers, Ltd. v. United States, 308 F. 2d 634 (C.A. 9, 1962); James Hotel Co., 39 T.C. 135 (1962), affd. 325 F. 2d 280 (C.A. 10, 1963); and Teleservice Co. of Wyoming Valley, 27 T.C. 722 (1957), affd. 254 F. 2d 105 (C.A. 3, 1958), certiorari denied 357 U.S. 919 (1958). The fallacy of the petitioner's reasoning stems not from the law in these cases but from the misconception in petitioner's brief of the facts.

[- 45 -]

In our findings of fact, there have been included any and all references in the minutes of the meetings of the stockholders and the minutes of the meetings of the board of directors of the petitioner which related to the adoption of the so-called "dues structure" charged to its members and, the entries on its books and records of the income derived therefrom. The only inference that the Court is able to draw from this record, coupled with the petitioner's claims, is that upon the repeal of the excise tax the petitioner found it unnecessary to increase its dues and charges for the period beginning April 1, 1966. There had been embodied in the dues structure, which was carried forward from that date, both an "assessment" and a provision for the excise tax on dues. Apparently, the petitioner continued to credit the account designated "No. 501 Assessments" with the amount included in the dues structure as "assessments." At the same time, petitioner opened a special savings account for the purchase of the club property in which there were deposited amounts purporting to be the savings resulting from the repeal of the excise tax.

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Beginning April 1, 1967, the petitioner proposed a new dues structure reflecting an increase in the totals charged to the various classes of members. It cannot be ascertained from the records whether the amounts credited to the account designated "No. 501 Assessments" for that fiscal year represented the same amount that had been designated as an "assessment" in the prior year, or was related to the savings in the excise tax. However, a different amount was deposited in the savings account, purportedly representing such savings.

Although it is impossible from this record to verify the manner in which the amounts deposited in the savings account were computed, if we accept the testimony presented by the petitioner that these amounts represented savings in the excise tax, the Court fails to understand how or why a decision by the board of directors to set aside such savings in a special account would give rise to a contribution to capital within the meaning of section 118. There

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would be included not only a portion of the dues of those members who had been subject to assessment under the dues structure effective for prior years but also a portion of the dues charged to the junior members and to those paying an annual charge for the use of the swimming pool, neither of whom had been subject to assessment in the past.

In the financial statements sent to the members, the savings which resulted from the repeal of the excise tax were included in "Club Dues" and included in income in determining profit and loss. The members were not informed by the board of directors that any portion of the savings resulting from the repeal of the excise tax would be set aside or "earmarked" as a "contribution to capital."

The deposit of funds in a savings account, shown on the balance sheet as being maintained for the purchase of the club property, does not of itself give rise to a capital contribution within the meaning of section 118. It would be equally consistent to assume that the amounts thus set aside represented a portion of the net income and cash flow from depreciation.

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Accordingly, if we look to the deposits in the savings account as a basis for the exclusion from income, the essential elements of notice and assent to the contribution are lacking. Furthermore, if the deposits represented the total savings on account of the repeal of the excise tax, the amounts in question were derived from both proprietary members and limited members having no interest in the Club except as "customers" receiving a service for their monthly charges.

If we look to the account designated "No. 501 Assessments" as a basis for the capital contribution, the essentials for such a contribution are likewise lacking. It must be remembered that this account was set up, not for the purpose of excluding assessments from income, but for the purpose of segregating a portion of the dues to be expended for capital improvements in order to minimize the impact of the excise tax on dues.

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On its books and records, and in the financial statements made available to its members, the amount designated "assessments" was included in income in determining profit and loss. The net profit or loss was transferred to the surplus account.

For the fiscal year beginning April 1, 1964, petitioner's president submitted a report to the board of directors outlining the proposed application of initiation fees and assessments to both capital and noncapital expenditures, including an insurance premium.

In addition, the record in this case fails to show that the amounts credited to the assessment account were earmarked for any specific purpose. If we look to the letter transmitted to the members by Mr. John T. Miller, President of the Club, under date of March 9, 1967, there are outlined the various purposes for which the "new dues structure" was designed. Such purposes encompassed both costs

and operating expenses, as well as the accumulation of funds for the purchase of the club property and the initiation of major improvement programs. The letter did not designate what portion of the dues, if any, would be dedicated to the purposes enumerated therein.

As a practical matter, upon the repeal of the excise tax, the petitioner appears to have abandoned any correlation between the funds derived from "assessments" and expenditures for the purposes enumerated in section 4243(b). That question became moot. Petitioner's brief is incorrect in that it states that "the amount set aside as assessments were separately listed on the financial statements that appeared in petitioner's annual meeting notices which went out to all of petitioner's members." The practice of setting forth the assessments separately was discontinued with the repeal of the excise tax and the adoption of the new dues structure effective April 1, 1967.

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For the fiscal year beginning April 1, 1966, petitioner continued to charge the same amount as dues as in the prior year, notwithstanding the repeal of the excise tax.

For the fiscal year beginning April 1, 1967, the petitioner increased the amount of the dues without providing any breakdown with respect to how much, if any, was deemed to be "assessments."

In computing its taxable income for the fiscal year ended March 31, 1967, petitioner initially excluded an amount which apparently represented reflected net additions to the plant and equipment account. In this proceeding, petitioner now argues that the full amount credited to the assessment account should be excluded, not on the basis of capital expenditures as described in section 4243(b), but on account of other capital items such as deposits in the savings account and the retirement of swimming pool bonds. However, the minutes indicate that funds for the retirement of such bonds were to be derived from the income generated by the pool, and not from any assessments.

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In computing its taxable income for the year ended March 31, 1968, petitioner excluded the amount credited to the assessment account without regard to expenditures. It cannot be shown that this amount represented the savings in the excise tax. In fact, the petitioner could not even prove how the amount was computed, or at least failed to do so.

A review of the record in this case fails to support the petitioner's claim that its members knowingly made a contribution to the capital of the Club with the understanding that such contribution would be restricted as to its use, whether that restriction related to capital improvements as defined in section 4243(b) or to the purchase of the club property.

In adopting the so-called dues structure, there was no commitment to the members with respect to the segregation or expenditure of the revenues resulting therefrom. Furthermore, the petitioner did not restrict itself in the use of such funds.

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The revenues derived from "assessments." as well as the dues and other charges to its members, were accounted for in the statements to the members as "REVENUE." From this there was deducted the certain costs under the designation "EXPENSES," the difference being reported as "NET INCOME."

Upon the repeal of the excise tax, petitioner failed to adjust the charges to its members in order to provide additional funds for the operation of the Club, as well as the purchase of the club property. There was no commitment, however, to dedicate any amount to that purchase. Except for the withdrawal of the downpayment from the savings account in the Schenectady Savings Bank, there have been no payments from this account for any purpose. It cannot be contended, moreover, that the funds accumulated therein could not have been expended at any time to meet operating costs.

At most, the record shows that the petitioner decided to keep the savings resulting from the excise tax in order to provide additional funds. The

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members had no choice in the matter. Although the excise tax applied to all classes of members, only the regular members could have brought the matter to a vote if opposed to this form of an indirect increase in the dues.

In its financial statements, the monthly charges by the Club to its various classes of members, whether termed "dues," "assessment," or "excise tax," were treated the same, as revenues received in consideration for goods and services. The elements of a contribution to capital within the meaning of section 118 are wholly lacking.

Respondent determined that a penalty of \$463.05 was due pursuant to section 6651 on account of the Club's failure to file a timely return for the fiscal year

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ended March 31, 1967.¹⁵ Section 6651(a) imposes a penalty of 5 percent of the outstanding tax liability for each month that the return is late not to exceed a total of 25 percent. To avoid the penalty, the taxpayer must be able to show reasonable cause for the failure to file the return on time. On September 13, 1967, petitioner filed an application for an automatic

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SEC. 6651. FAILURE TO FILE TAX RETURN OR TO PAY TAX.

(a) Addition to the Tax.--In case of failure--

(1) to file any return required under authority of subchapter A of chapter 61 (other than part III thereof) subchapter A of chapter 51 (relating to distilled spirits, wines, and beer), or of subchapter A of chapter 52 (relating to tobacco, cigars, cigarettes, and cigarette papers and tubes), or of subchapter A of chapter 53 (relating to machine guns and certain other firearms), on the date prescribed therefor (determined with regard to any extension of time for filing), unless it is shown that such failure is due to reasonable cause and not due to willful neglect, there shall be added to the amount required to be shown as tax on such return 5 percent of the amount of such tax if the failure is not for more than 1 month, with an additional 5 percent for each additional month or fraction thereof during which such failure continues, not exceeding 25 percent in the aggregate;

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extension of time pursuant to section 6081(b) within which to file the return. However, petitioner's income tax return for the fiscal year ended March 31, 1967, was not filed until October 30, 1967.

Petitioner based its defense on the fact that the penalty was imposed on the deficiency and that no deficiency was owed in this case. Therefore, it presented no evidence to show reasonable cause for the delay. In view of the lack of any such evidence, the determination of the respondent is presumed correct.

Decision will be entered
under Rule 155.

UNITED STATES TAX COURT

THE EDISON CLUB,

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Docket No. 7828-71

RESPONDENT'S COMPUTATION FOR ENTRY OF DECISION

The attached computation is submitted, on behalf of the respondent, in compliance with the Court's opinion determining the issues in this case, together with a proposed decision which is being lodged concurrently with said computation.

This computation is submitted without prejudice to respondent's right to contest the correctness of the decision entered herein by the Court.

FEB 27 1975

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Internal Revenue Service.

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By: ~~(Sgd) THEODORE E. DAVIS, JR.~~
THEODORE E. DAVIS,
Assistant Regional Counsel.

CC:NY:TC
BDGordon
JLDavidson

COMPUTATION STATEMENT

In re: The Edison Club
Box 93
Rexford, New York 12148

Docket No. 7828-71

Income Tax

<u>Tax Years Ended</u>	<u>Deficiency</u>	<u>Addition To Tax</u> <u>Sec. 6651</u>
March 31, 1967	\$ 4,630.48	\$463.05
March 31, 1968	<u>18,537.72</u>	<u>---</u>
Total	\$23,168.20	\$463.05

The deficiencies in income taxes and addition to the tax due from the petitioner as shown above are as set forth in the statutory notice of deficiency dated August 25, 1971, a copy of which is attached to the petition in this case.

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[2]

UNITED STATES TAX COURT

THE EDISON CLUB,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7828-71
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	

PETITIONER'S COMPUTATION FOR ENTRY OF DECISION

Pursuant to the Court's opinion in Tax Court Memorandum 1975-19, petitioner hereby submits a computation of the deficiency believed by it to be in accordance with the Court's findings and conclusions, together with a proposed decision which is hereby lodged concurrently with said computation.

Petitioner has computed the deficiencies and addition to tax as follows:

<u>Fiscal Year Ended</u>	<u>Deficiency</u>	<u>Addition to Tax</u>
March 31, 1967	None	None
March 31, 1968	<u>\$3,119.79</u>	<u>None</u>
	\$3,119.79	None

In support of this computation petitioner notes that the Court's findings that petitioner did not properly earmark

amounts taken in as assessments so as to qualify said amounts as capital contributions on that basis and that, therefore, a computation under Rule 155 is necessary, requires a computation under the principles of the case of Bear Valley Mutual Water Company v. Riddell, 283 F.Supp. 949 (C.D. Calif. 1968), affirmed per curiam, 427 F.2d 713 (9th Cir. 1970).

Under the Bear Valley case the allocation between capital contributions and gross income is made in accordance with the following formula:

$$\frac{\text{Member Assessments}}{\text{Member Assessments} + \text{Net Income}} \times \text{Capital Expenditures} = \text{Amount to be Excluded from Gross Income}$$

Here, under this Court's opinion, member assessments were \$38,925.48 and \$38,354.82 for 1967 and 1968, respectively. In addition, for 1967 \$25,025 of the \$38,925.48 taken in as member assessments was included in taxable income. Thus, for the purpose of the calculations contemplated here, member assessments for 1967 would be \$13, 900.48 (\$38,925.48 less \$25,025.00).

The taxable incomes, as listed on line 30 of Form 1120, Exhibits 1-A and 2-B, were \$17,148 and \$23,760 for 1967 and 1968, respectively. To arrive at net income, depreciation of \$38,167 and \$36,659 for 1967 and 1968, respectively,

must be added back to taxable income since these amounts are also funds available for capital expenditures. As a consequence, the net incomes for 1967 and 1968 were \$55,315 and \$60,419, respectively.

Capital expenditures for 1967 were at least \$74,751.87, including \$22,708.69 for plant and equipment, \$8,933.23 for retirement of capital assets, and \$43,109.95 for amounts set aside for the Club purchase. Capital expenditures for 1968 were at least \$80,712.43, including \$23,390.72 for plant and equipment, \$17,925.40 for retirement of capital assets, and \$39,396.31 for amounts set aside for the Club purchase.

Applying the formula to the above figures results in an amount that may be excluded from gross income of \$15,012.35 in 1967 and \$31,341.41 in 1968. This in turn results in no gross income omitted in 1967 and \$7,013.41 (i.e., \$38,354.82 less \$31,341.41) omitted in 1968.

These calculations result in no deficiency in 1967. Furthermore, there is no addition to tax for 1967 because there is no deficiency of tax for 1967.

For 1968 the deficiency in tax is calculated as follows:

Taxable income per return	\$23,760.00
Additional income	7,013.41
	<hr/>
Taxable income as corrected	\$30,773.41

Tax:

30,773.41 x 48% less \$6,500	3,271.24
Plus: Tax surcharge \$8,271.24 x 2.486339%	205.65
Less: Investment credit per return	1,193.56
	<hr/>
Income tax liability	\$ 7,283.33
Income tax liability per return	4,163.54
Deficiency	<u>\$ 3,119.79</u>

Wherefore, without prejudice to the right of appeal, petitioner prays that its computation be adopted by the Court as and for its computation for entry of decision in this case.

Respectfully submitted,

J. P. Janetatos
Robert A. Fesjian
815 Connecticut Avenue, N.W.
Washington, D.C. 20006
202-298-8290

UNITED STATES TAX COURT

THE EDISON CLUB,)	
)	
Petitioner,)	
)	
v.)	Docket No. 7828-71
)	
COMMISSIONER OF INTERNAL REVENUE,)	
)	
Respondent.)	
)	

DECISION

Pursuant to the opinion of the Court filed February 6, 1975, and incorporating herein the facts recited in petitioner's computation as the findings of the Court, it is

ORDERED and DECIDED: That there is no deficiency in income tax due from the petitioner for the taxable year ended March 31, 1967 and there is a deficiency in income tax due from the petitioner for the taxable year ended March 31, 1968 in the amount of \$3,119.79; and

That there is no addition to the tax due from the petitioner for the taxable year ended March 31, 1967 under the provisions of Int. Rev. Code of 1954, § 6651(a).

Judge.

Entered:

* * * *

It is hereby stipulated that the foregoing decision is in accordance with the opinion of the Court and petitioner's computation, and that the Court may enter this decision, without prejudice to the right of either party to contest the correctness of the decision entered herein.

ROBERT A. FESJIAN,
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By: THEODORE E. DAVIS
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UNITED STATES TAX COURT
WASHINGTON

THE EDISON CLUB

Petitioner,

v.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Docket No. 7828-71

O R D E R

This case was calendared for hearing under Rule 155 at the Motions Session of the Court beginning at 10:00 a.m. on March 12, 1975 in the Tax Court Courtroom, Third Floor, 400 Second Street, N.W., Washington, D.C.

When the case was called from the calendar on that date, the Court, in lieu of a formal hearing, met with Counsel for both petitioner and respondent in chambers. As a result of this conference, it is the opinion of the Court that in view of the Court's determination in its Opinion filed in this case on February 6, 1975 that the amounts received by petitioner from its members constituted gross income in the first instance, there is no basis for excluding any portion thereof. Accordingly, it is hereby

ORDERED that the decision in the above case will be entered in accordance with respondent's computations heretofore filed with this Court on March 4, 1975.

(signed) William H. Gussaly

Judge

Dated: Washington, D.C.
March 13, 1975

Respondent.

Docket No. 7828-71

DECISION

Pursuant to the opinion of the Court filed February 6, 1975, and incorporating herein the facts recited in the respondent's computation as the findings of the Court, it is

ORDERED and DECIDED: That there are deficiencies in income taxes due from the petitioner for the taxable years ended March 31, 1967 and March 31, 1968 in the amounts of \$4,630.48 and \$18,537.72, respectively; and

That there is an addition to the tax due from the petitioner for the taxable year ended March 31, 1967 under the provisions of Int. Rev. Code of 1954, § 6651(a), in the amount of \$463.05.

(signed) William H. Qualey

Judge.

Entered: MAR 14 1975

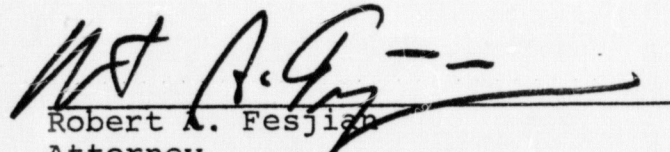
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CERTIFICATE OF SERVICE

It is hereby certified that service of this record appendix has been made on opposing counsel by mailing two copies thereof on this 8th day of October, 1975, in an envelope, with postage prepaid, properly addressed to him as follows:

Mr. Scott P. Crampton
Assistant Attorney General
Tax Division
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United States Department of Justice
Washington, D.C. 20530


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